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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 12, 2009
9:00 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Reader Aids

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 74, No. 76
Wednesday, April 22, 2009

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 53, 82, and 94

[Docket No. APHIS–2007–0014]

RIN 0579–AC47

Importation of Table Eggs From Regions Where Exotic Newcastle Disease Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to modify the requirements concerning the importation of eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) exists. This action is necessary to provide a more efficient and equally effective testing option for determining the END status of flocks producing eggs (other than hatching eggs) for export to the United States.

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–7837.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 prohibit or restrict the importation of certain animals and animal and poultry products into the United States to prevent the introduction of dangerous and destructive diseases of livestock and poultry. Section 94.6 contains requirements that apply to the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) or highly pathogenic avian influenza subtype H5N1 is considered to exist.

On August 13, 2007, we published in the **Federal Register** (72 FR 45177–45181, Docket No. APHIS–2007–0014) a proposal [1] to modify the requirements concerning the importation of eggs (other than hatching eggs) from regions where END exists. We proposed this action to provide for a more efficient and effective testing option for determining the END status of flocks producing table eggs for export to the United States.

We solicited comments concerning our proposal for 60 days ending October 12, 2007. We received four comments by that date. They were from a private citizen, State agricultural agencies, and another agency in the U.S. Department of Agriculture (USDA). They are discussed below.

One commenter stated that commercial poultry farming methods were responsible for diseases in poultry. The commenter suggested that the abolition of these methods would remove the need to regulate movement of eggs and poultry.

We disagree. Poultry become infected with END when they are exposed to Newcastle disease virus (NDV), which can be spread by pet and wild birds as well as domestic poultry. For example, a 1971 outbreak of END started in pet birds in California and spread to commercial flocks. Wild double-crested cormorants were the source of an END outbreak in North Dakota in 1992. The 2002–2003 END outbreak in several western States was first detected in backyard poultry flocks in California, from whence it spread to commercial poultry houses. We are making no changes in response to this comment.

One commenter expressed concern that the proposed testing protocols would increase the risk to human health.

There is no public health risk from END. Human infection with NDV is rare and usually occurs only in people who have close direct contact with infected birds, such as veterinarians or laboratory staff. The resulting disease is usually limited to conjunctivitis, and recovery is usually rapid. There are no known instances of NDV transmission to humans through handling or consumption of poultry products. In any case, as discussed in the proposed rule, the testing requirements in this final rule are as effective at detecting END as the requirements that were previously in place.

One commenter expressed concern that some countries may not have laboratories that can perform virus isolation testing and APHIS did not include provisions to ensure that the samples be transported and handled appropriately. Another commenter asked for assurance that the cull birds for sampling will be selected, and that the samples themselves will be collected, by a government salaried veterinarian. The commenter also stated that the samples should be from birds that died, not birds that were killed.

As we explained in the proposed rule, and as is true in the current regulations, the laboratory performing the testing must be in the region of origin of the eggs and must be approved by the veterinary services organization of the national government of the region. If a region lacks the necessary veterinary infrastructure to perform the appropriate tests and to transport and handle samples appropriately, it would not be eligible to export eggs to the United States. While there is always a risk of improperly handled samples returning a false negative, we will require that the samples be collected from cull birds chosen by a salaried veterinary officer of the national government of the region of origin or by a veterinarian accredited by the national government of Mexico. We are confident that these measures will ensure the appropriate handling of the samples.

It was our intent that samples be collected from sick birds or birds that died, not healthy birds that were killed. We have clarified this in the final rule. In addition, to be consistent with the other proposed changes, we have also made a minor change in our proposed regulatory text in paragraph (c)(1)(ix)(C) of § 94.6 by replacing the words ''an accredited veterinarian'' with the words ''a veterinarian accredited by the national government of Mexico''. We proposed to recognize only accreditation by the national government of Mexico, so the more specific form is appropriate.

[1] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0014.*

Two commenters stated that the level of confidence associated with the proposed sampling rate was too low. One asked why we were not requiring a sampling rate that would detect low-level infection with 98 percent confidence.

As we explained in the proposed rule, the level of confidence associated with the proposed sampling rate is 95 percent. This is the same level of confidence associated with the current requirements under which 10 percent of the flock must be sampled. Our intent is to replace the current testing regimen with one that will be both timelier and more efficient while maintaining the same level of effectiveness.

We proposed to allow either hemagglutination inhibition (HI) or embryonated egg inoculation testing to be used. One commenter stated that in 9 CFR 53.1, END is defined as ''any velogenic Newcastle disease,'' and that this implies that lentogenic and mesogenic strains of NDV do not cause END. The commenter expressed concern that HI tests conducted on blood samples from sick birds would only identify whether or not a sample was positive or negative for NDV, since there is no serological test to detect specific strains of the END virus.

We agree with the commenter's concerns. While the current regulations allow for HI testing of sentinel birds, this is appropriate because sentinel birds are not vaccinated against END. For flocks that have been vaccinated against END, HI testing is not appropriate because it will not be able to distinguish between a bird that has been vaccinated against END and a bird that has died from disease. We have revised the risk assessment accordingly and will remove references to HI testing from the final rule. Embryonated egg inoculation testing, one of the options available under the current regulations, is an accepted diagnostic procedure for detecting NDV and will be effective for detecting the virus without additional HI testing. The revised risk assessment, titled ''Justification for the changes to the regulations governing the importation of table eggs from regions where exotic Newcastle disease exists into the United States,'' may be viewed on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The commenter also noted that with new knowledge of NDV the classification and terminology of END has evolved; in fact, in a proposed rule published in the **Federal Register** on August 28, 2007 (72 FR 49231–49236, Docket No. APHIS–2007–0033), we had proposed to change the definition of END in the select agent regulations in 9 CFR part 121 to replace the word ''velogenic'' with the word ''virulent.'' We published a final rule adding this change to 9 CFR part 121 on October 16, 2008 (73 FR 61325–61332). The commenter stated that if the new wording were adopted the definition in 9 CFR part 53 would have to be amended as well.

We agree with the commenter that amending the END definition to be consistent with our select agent regulations and with the World Organization for Animal Health (OIE) definition is appropriate. Therefore, we are amending the definition of ''exotic Newcastle disease'' in § 53.1, the definition of ''END'' in § 82.1, and the definition of ''exotic Newcastle disease (END)'' in § 94.0 to replace the word ''velogenic'' with the word ''virulent.'' This will bring those definitions in line with the definition of END in our select agents regulations in 9 CFR part 121 and the OIE definition of END.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The Regulatory Flexibility Act requires agencies to evaluate the potential effects of rules on small businesses, small organizations, and small governmental jurisdictions. Section 605 of the Act allows the head of an agency to certify that a rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Following is the factual basis for such certification of this final rule.

We are amending the regulations concerning the importation of eggs (other than hatching eggs) from regions where exotic Newcastle disease (END) exists. This action will provide a more efficient testing protocol for determining the END status of flocks producing eggs (other than hatching eggs) for export to the United States.

The goal of this rule is to make our testing requirements more efficient and equally effective while continuing to protect domestic poultry from END. One procedure by which foreign producers located in regions affected with END can currently export table eggs into the United States is to place sentinel birds within their flocks and then test these birds for presence of the disease. As many of these foreign producers vaccinate their flocks for END, sentinel birds may produce false-positive results when tested for END, necessitating further testing to differentiate a vaccine-induced response from an actual infection. The second procedure currently authorized, testing 10 percent of the flock, is viewed by foreign egg producers as excessive. This final rule will replace the current options for flock testing with a less costly protocol that targets the birds most likely to be infected.

U.S. Table Egg Production and Imports

The United States is the world's largest producer of poultry meat and the second largest egg producer after China. Table egg production during the year ending November 30, 2007, totaled 77.3 billion eggs.[2] The largest table egg-producing States are Indiana, Iowa, and Pennsylvania.[3]

The cost of complying with flock testing requirements for foreign suppliers of table eggs from regions where END exists will likely decrease due to the lower number of birds required to be tested to demonstrate flock freedom from END. This reduction in cost could result in a small increase in the volume of table egg imports by the United States from END-affected regions. In 2007, table eggs were imported from two countries free of END, Canada and New Zealand. These imports totaled 94,241 dozen and were valued at $345,000. The only other country from which table eggs were imported in 2007 was China, where END is considered to exist. These imports totaled 7,740 dozen and were valued at $12,000.[4] Between January and August of 2008, the United States' only table eggs imports were from Canada (60,700 dozen valued at $80,020) and New Zealand (21,888

[2] USDA, *Chickens and Eggs 2007 Summary.* Washington, DC: National Agricultural Statistics Service, Table: Eggs; Production During the Month by Type 2006–2007, pg. 8. February 2008.

[3] Production statistics for Alaska, Arizona, Delaware, Kansas, North Dakota, New Mexico, Nevada, and Rhode Island are not separately reported to avoid disclosing information on individual operations. *http://usda.mannlib.cornell.edu/usda/current/ChickEgg/ChickEgg-02-28-2008.pdf.*

[4] USDA, *Harmonized System 10-Digit Imports.* Washington, DC: Foreign Agricultural Service, 2008. Import quantities and cash value estimates of table eggs for regions where END is considered to exist were approximated by subtracting the quantity and value of imports from regions free of END from the ''world total'' query.

dozen valued at $148,991); no table eggs were imported from China or any other country where END is considered to exist. The 7,740 dozen table eggs imported from China in 2007 was a negligible quantity compared to the number produced domestically (less than 100,000, compared to 77.3 billion). Any increase in the U.S. supply of table eggs attributable to this final rule will likely be insignificant.

Impact on Small Entities

Companies engaged in chicken egg production are classified under the North American Industry Classification System code 112310. The Small Business Administration (SBA) defines a chicken egg-producing entity as small if it has annual receipts of not more than $11.5 million per year. The 2002 Census of Agriculture reported that there were 83,381 domestic poultry and egg farms. While their size distribution is unknown, the census indicates that 29,393 of those poultry operations had annual sales of $50,000 or more. Thus, the majority of operations engaged in table egg production are small entities by SBA standards.

As described, recent imports of table eggs from regions where END exists have come only from China and constitute an extremely small share of the U.S. supply. While this rule provides a more efficient and effective testing protocol for determining the END status of flocks producing table eggs for the United States, any effects on the supply of imported eggs will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0328.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

Lists of Subjects

9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR parts 53, 82, and 94 as follows:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ 1. The authority citation for part 53 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 53.1 [Amended]

■ 2. In § 53.1, the definition for ''Exotic Newcastle Disease (END)'' is amended by removing the word ''velogenic'' and adding the word ''virulent'' in its place.

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS

■ 3. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 82.1 [Amended]

■ 4. In § 82.1, the definition for ''END'' is amended by removing the word ''velogenic'' and adding the word ''virulent'' in its place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 5. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 6. The heading of part 94 is revised to read as set forth above.

§ 94.0 [Amended]

■ 7. In § 94.0, the definition of ''Exotic Newcastle disease (END)'' is amended by removing the word ''velogenic'' and adding the word ''virulent'' in its place.

■ 8. In § 94.6, the introductory text of paragraph (c)(1), paragraph (c)(1)(v), paragraph (c)(1)(viii), the introductory text of paragraph (c)(1)(ix), paragraph (c)(1)(ix)(C), and the OMB citation at the end of the section are revised, and a new paragraph (c)(1)(ix)(D) is added to read as follows:

§ 94.6 Carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Exotic Newcastle disease or highly pathogenic avian influenza subtype H5N1 is considered to exist.

* * * * *

(c) * * *

(1) *With a certificate.* The eggs may be imported if they are accompanied by a certificate signed by a salaried veterinary officer of the national government of the region of origin or, if exported from Mexico, accompanied either by such a certificate or by a certificate issued by a veterinarian accredited by the national government of Mexico and endorsed by a full-time salaried veterinary officer of the national government of Mexico, thereby representing that the veterinarian issuing the certificate was authorized to do so, and:

* * * * *

(v) The certificate states that no more than 90 days before the certificate was signed, a salaried veterinary officer of the national government of the region of origin or, if exported from Mexico, by a veterinarian accredited by the national government of Mexico, inspected the flock of origin and found no evidence of communicable diseases of poultry.

* * * * *

(viii) Before leaving the premises of origin, the cases in which the eggs were

packed were sealed with a seal of the national government of the region of origin by the salaried veterinarian of the national government of the region of origin who signed the certificate or, if exported from Mexico, by the veterinarian accredited by the national government of Mexico who signed the certificate.

(ix) In addition, if the eggs were laid in any region where END is considered to exist (see paragraph (a) of this section), the certificate must also state:

* * * * *

(C) The eggs are from a flock of origin found free of END as follows: On the seventh and fourteenth days of the 21-day period before the certificate is signed, at least 1 cull bird (a sick or dead bird, not a healthy bird that was killed) for each 10,000 live birds occupying each poultry house certified for exporting table eggs was tested for END virus using embryonated egg inoculation technique. The weekly cull rate of birds of every exporting poultry house within the exporting farm does not exceed 0.1 percent. The tests present no clinical or immunological evidence of END by embryonated egg inoculation technique from tissues of birds that were culled and have been collected by a salaried veterinary officer of the national government of the region of origin or by a veterinarian accredited by the national government of Mexico. All examinations and embryonated egg inoculation tests were conducted in a laboratory located in the region of origin, and the laboratory was approved to conduct the examinations and tests by the veterinary services organization of the national government of that region. All results were negative for END.

(D) Egg drop syndrome is notifiable in the region of origin and there have been no reports of egg drop syndrome in the flocks of origin of the eggs, or within a 50 kilometer radius of the flock of origin, for the 90 days prior to the issuance of the certificate.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0245, and 0579–0328)

§ 94.8 [Amended]

■ 9. In § 94.8 in the introductory text and paragraph (a)(4) introductory text footnotes 8 and 9 are redesignated as footnotes 7 and 8 respectively.

§ 94.9 [Amended]

■ 10. In § 94.9 (a), (c)(3), and (e)(2) introductory text footnotes 10 through 12 are redesignated as footnotes 9 through 11 respectively.

■ 11. Section 94.12 is amended as follows:

■ a. In paragraph (b)(1)(iii)(B), by redesignating footnote 13 as footnote 12.

■ b. In paragraph (b)(3), by redesignating footnote 14 as footnote 13 and revising newly redesignated footnote 13 to read as set forth below.

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

* * * * *

(b) * * *

(3) * * * [13]

[13] See footnote 9 in § 94.9.

§ 94.16 [Amended]

■ 12. In § 94.16 (b)(2) footnote 15 is redesignated as footnote 14.

■ 13. Section 94.17 is amended as follows:

■ a. In paragraph (e), by redesignating footnote 16 as footnote 15.

■ b. In paragraph (p)(1)(i), by redesignating footnote 17 as footnote 16 and revising newly redesignated footnote 16 to read as set forth below.

§ 94.17 Dry-cured pork products from regions where foot-and-mouth disease, rinderpest, African swine fever, classical swine fever, or swine vesicular disease exists.

* * * * *

(p) * * *

(1) * * *

(i) * * * [16]

[16] See footnote 15 in paragraph (e) of this section.

§ 94.18 [Amended]

■ 14. In § 94.18 in paragraphs (c)(2) and (d)(1) footnotes 18 and 19 are redesignated as footnotes (17) and (18) respectively.

§ 94.24 [Amended]

■ 15. In § 94.24 in paragraphs (a)(5) and (b)(6) footnotes 20 and 21 are redesignated as footnotes 19 and 20 respectively.

Done in Washington, DC, this 15th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–9102 Filed 4–21–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1259; Airspace Docket No. 08–ASO–1]

Modification of the Atlantic High and San Juan Low Offshore Airspace Areas; East Coast, United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will amend the boundaries of the Atlantic High and San Juan Low Offshore Airspace Areas located off the east coast of the United States. The implementation of the West Atlantic Route System Plus (WATRS Plus) project modified the boundaries of the Miami Control Area (CTA)/Flight Identification Region (FIR), the San Juan CTA/FIR, and the New York Oceanic CTA/FIR. This action modifies the Atlantic High and San Juan Low Offshore Airspace Area boundaries to coincide with the CTA/FIR changes.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On Thursday January 15, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Atlantic High and San Juan Low Offshore Airspace Areas, East Coast, United States (74 FR 2427). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the NPRM.

High offshore airspace areas are published in paragraph 2003, and low offshore airspace areas are published in paragraph 6007, of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The offshore airspace areas listed in this

document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying the boundaries of the Atlantic High and San Juan Low Offshore Airspace Areas to match recent boundary changes to the Miami, San Juan and New York Oceanic CTA/FIRs. The CTA/FIR boundaries were modified due to the implementation of the WATRS Plus project, which introduced a redesigned route structure and a reduced lateral separation standard on oceanic routes in the WATRS Plus CTAs to enhance en route capacity. This change is a minor realignment of one point common to both the Atlantic High and San Juan Low Offshore Airspace area boundaries. The point at lat. 21°08′00′ N., long. 67°45′00″ W. is changed to read lat. 21°14′21″ N., long. 67°39′02″ W.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administration. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it enhances the safety of aircraft within the National Airspace System.

ICAO Considerations

As this action relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty.

A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves the designation of navigable airspace outside the United States, the Administrator consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with paragraph 311a of FAA Order 1050.1E, Environmental Impacts: Polices and Procedures. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, signed October 3, 2008 and effective October 31, 2008, is amended as follows:

Paragraph 2003 Offshore Airspace Areas.

* * * * *

Atlantic High [Amended]

That airspace extending upward from 18,000 feet MSL to and including FL 600 within the area bounded on the east from north to south by the Moncton FIR, New York Oceanic CTA/FIR, and the San Juan Oceanic CTA/FIR; to the point where the San Juan Oceanic CTA/FIR boundary turns southwest at lat. 21°14′21″ N., long. 67°39′02″ W., thence from that point southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°47′28″ N., long. 67°09′37″ W., thence counter-clockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°53′05″ N., long. 67°47′43″ W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°39′00″ N., long. 69°09′00″ W., thence from that point the area is bounded on the south from east to west by the Santo Domingo FIR, Port-Au-Prince CTA/FIR, and the Havana CTA/FIR; bounded on the west from south to north by the Houston Oceanic CTA/FIR, southern boundary of the Jacksonville Air Route Traffic Control Center and a line 12 miles offshore and parallel to the U.S. shoreline.

* * * * *

Paragraph 6007 Offshore Airspace Areas.

* * * * *

San Juan Low, PR [Amended]

That airspace extending upward from 5,500 feet MSL from the point of intersection of the San Juan Oceanic CTA/FIR and Miami Oceanic CTA/FIR boundary at lat. 21°14′21″ N., long. 67°39′02″ W., thence from that point

southeast via a straight line to intersect a 100-mile radius of the Fernando Luis Ribas Dominicci Airport at lat. 19°47′28″ N., long. 67°09′37″ W., thence clockwise via a 100-mile radius of the Fernando Luis Ribas Dominicci Airport to lat. 18°53′05″ N., long. 67°47′43″ W., thence from that point northwest via a straight line to intersect the point where the Santo Domingo FIR turns northwest at lat. 19°39′00″ N., long. 69°09′00″ W., thence from that point northeast along the San Juan CTA/FIR and Miami CTA/FIR boundary to the point of beginning.

* * * * *

Issued in Washington, DC, on April 15, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–9137 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM08–11–000]

Version Two Facilities Design, Connections and Maintenance Reliability Standards

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule: correction.

SUMMARY: This document corrects compliance filing deadline errors in a Final Rule that the Federal Energy Regulatory Commission published in the **Federal Register** on March 30, 2009. That action approved three revised Reliability Standards developed by the North American Electric Reliability Corporation (NERC), designated by NERC as FAC–010–2, FAC–011–2 and FAC–014–2, which set requirements for the development and communication of system operating limits of the Bulk-Power system for use in planning and operation horizons.

DATES: *Effective Date:* April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Cory Lankford (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, at (202) 502–6711.

SUPPLEMENTARY INFORMATION: In FR Document E–9–6823, published March 30, 2009 (74 FR 14008), make the following corrections to compliance filing dates:

1. On page 14014, column 2, the last sentence of paragraph 50 is corrected to read: ''The ERO shall submit its revisions to the Commission within 30 days from the effective date of this final rule, as discussed above and as indicated in Attachment A.''

2. On page 14016, column 1, the last sentence of paragraph 65 is corrected to read: ''The ERO shall submit its revisions to sub-requirements R4.1 through R4.3 to the Commission within 30 days of the effective date of this final rule, as discussed above and as indicated in Attachment A.''

3. On page 14016, column 2, the last sentence of paragraph 71 is corrected to read: ''The Commission therefore adopts the NOPR proposal agreed to by NERC and directs the ERO to file revised violation severity levels for FAC–011–2, Requirements R3 within 30 days of the effective date of this final rule, as discussed above and as indicated in Attachment A.

4. On page 14017, column 1, the last sentence of paragraph 75 is corrected to read: ''The ERO shall submit its revisions to sub-requirements R4.1 through R4.3 to the Commission with 30 days of the effective date of this final rule, as discussed above and as indicated in Attachment A.''

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9169 Filed 4–21–09; 8:45 am]

BILLING CODE P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule; correction.

SUMMARY: The Pension Benefit Guaranty Corporation published in the **Federal Register** of April 15, 2009, a final rule informing the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. This document corrects an inadvertent error in that final rule.

DATES: Effective May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation published a document in the April 15, 2009, **Federal Register** (74 FR 17395), informing the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. This document corrects an inadvertent error in that final rule.

■ In FR Doc. E9–8674, published on April 15, 2009 (74 FR 17395), make the following corrections.

Appendix B to Part 4022—[Corrected]

■ 1. On page 17396, in the table for Appendix B to Part 4022, under ''Immediate annuity rate (percent)'', remove the figure ''3.25'', and add, in its place, ''3.50''.

Appendix C to Part 4022—[Corrected]

■ 2. On page 17396, in the table for Appendix C to Part 4022, under ''Immediate annuity rate (percent)'', remove the figure ''3.25'', and add, in its place, ''3.50''.

Issued in Washington, DC, on this 16th day of April 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–9212 Filed 4–21–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2008–1268]

RIN 1625–AA08

Special Local Regulation; Volvo Ocean Race 2009, Nahant, Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation during the Volvo Ocean Race 2009 In-Port Race to be held on Broad Sound, off Nahant, Massachusetts, on May 9, 2009. This special local regulation is necessary to provide for the safety of life on navigable waters during the event. This proposed action is intended to restrict vessel traffic before, during and after the race.

DATES: This rule is effective from 10:30 a.m. through 4 p.m. on May 09, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–

1268 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1268 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Eldridge McFadden, Sector Boston, Waterways Management, telephone 617–223–5160, e-mail *Eldridge.C.Mcfadden@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule.

Concerns raised by the Stellwagen Banks National Marine Sanctuary, a division of NOAA, prompted the race sponsors to reevaluate certain details of the race, including its course. Certain details, including the course for the race, were eventually changed due to these concerns. The lack of certainty until the recent finalization of all race details delayed the creation of the rulemaking for this event, which made it impracticable to create a Notice of Proposed Rulemaking.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.**

Background and Purpose

The Volvo Ocean Race, formerly the Whitbread Round the World Race, is a yacht race around the world, held every three years. The current race started in Alicante, Spain on October 11, 2008, and has been traveling internationally from port to port. In addition to a timed race between ports, some of the ports host an In-Port Race for points. This special local regulation addresses the In-Port Race which is to take place within the area of responsibility of the Captain of the Port Boston. Broad Sound is an area which is commonly used as a fishing area. To ensure the unimpeded sailing of the races and to prevent damage to equipment and danger to any potential fishermen or sailors in this area, a special local regulation is necessary. On May 9, 2008, the Volvo Ocean Race coordinators intend to hold an In-Port Race on the waters of Broad Sound in Boston Harbor. The event will consist of up to eight sailing yachts on a course within a 1-mile radius circular area. A fleet of spectator vessels are expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the race. The event coordinators have been in contact with members of the local communities affected including the harbormasters of Boston, Nahant and Winthrop, Massachusetts as well as local fishermen, to request support and inform them of the plans.

Discussion of Rule

This ruling proposes to create a Special Local Regulation encompassing a two-mile wide sailing race area and associated spectator area with a center point of 42°23′ N., 70°55′45″ W., within Broad Sound, Nahant, Massachusetts from 10:30 a.m. to 4 p.m. on May 9, 2009. The regulation will be in effect for only five and one half hours, after which time the area will be opened to all vessel traffic. The course of the race itself will be within the two-mile diameter area and will be set up and marked with sailing buoys according to the winds the day of the race. Except for participants and spectator vessels or other vessels as authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area during the enforcement period.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is not a significant regulatory action as it is a temporary event which will be in effect only for a short period of time. Although this regulation would prevent traffic from transiting a portion of the Broad Sound during the event, the effect of this regulation would not be significant due to the limited duration that the regulated area would be in effect and the extensive advance notification and outreach the Volvo Ocean Race coordinators have made to the maritime community, as well as via broadcast and local notice to mariners, so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: Fishermen, and the owners or operators of vessels intending to transit, fish or anchor in a portion of Broad Sound, Massachusetts, from 10:30 a.m. to 4 p.m. on May 9, 2009.

This special local regulation would not have a significant economic impact on a substantial number of small entities for the following reasons: This rule would be in effect for only five and a half hours and vessel traffic could pass around the regulated area. Before the effective period, we will issue maritime advisories widely available to users of the sound.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can

better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves the creation of a special local regulation for a marine event of limited duration. Under figure 2–1, paragraph (34)(h), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.35–T01–1268 to read as follows:

§ 100.35–T01–1268 Volvo Ocean Race 2009, Broad Sound, Nahant, Massachusetts.

(a) *Regulated area.* A zone comprised of a circle two nautical miles in diameter with the center point at position 42°23′00″ N., 070°55′45″ W.

(b) *Special Local Regulation.* The regulated area is closed to all transiting traffic except that traffic involved in, supporting or viewing the Volvo Ocean Race.

(c) *Effective dates.* This regulation is effective from 10:30 a.m. to 4 p.m. on May 9, 2009.

(d) *Definitions.* (1) *Patrol vessel* means any Coast Guard vessel designated as Patrol Commander.

(2) The Coast Guard Patrol Commander is a commissioned, warrant, petty officer of the Coast Guard who has been designated by Commander, Coast Guard Sector Boston. The Patrol Commander is empowered to control movement of vessels in the regulated area and adjoining waters during the hours these regulations are in effect.

(3) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area shall serve as

a signal to stop. Vessels or persons signaled shall stop and shall comply with the orders of the patrol vessels. Failure to due so may result in the expulsion from the area, citation for failure to comply, or both.

(4) Any spectator vessel may anchor outside the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

Dated: March 10, 2009.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E9–9165 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0278]

RIN 1625–AA00

Safety Zone; Waters Surrounding Berth 7 at the Port of Oakland, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the San Francisco Bay, CA at Berth 7 at the Port of Oakland during the offloading of the ZHEN HUA 18. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without the permission of the Captain of the Port or his designated representative.

DATES: This rule is effective from noon on April 14, 2009, through 11:59 p.m. on April 24, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0278 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0278 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Junior Grade Simone Mausz, U.S. Coast Guard Sector San Francisco, at (415) 399–7442. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the offloading of heavy equipment onboard this vessel, the safety zone is necessary to provide for the safety of other vessels transiting the area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the offload.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard was only recently notified of the safety concerns, and any delay in the effective date of this rule would expose mariners to the dangers posed by the equipment being offloaded.

Background and Purpose

The M/V ZHEN HUA 18 will be delivering heavy equipment and materials for use in the construction of the San Francisco-Oakland Bay Bridge project. This rule is necessary for the safety of the public and vessels transiting to other berths during the offload of this cargo. This rule prohibits entry of any vessel or person inside the safety zone without specific authorization from the Captain of the Port or his designated representative.

Discussion of Rule

This safety zone will remain in effect from noon on April 14, 2009, through 11:59 p.m. April 24, 2009, and includes all waters extending from the surface area to the sea floor within approximately 50 yards seaward from the moored vessel and encompasses all waters in San Francisco Bay within an area created by connecting the following geographical positions: From latitude 37°49′08″ N and longitude 122°19′07″ W; thence to latitude 37°49′05″ N and longitude 122°19′30″ W; thence to latitude 37°49′15″ N and longitude 122°18′52″ W; thence to latitude 37°49′18″ N and longitude 122°18′56″ W; thence along the shoreline back to the beginning point.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the berth while the equipment is offloaded. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because vessels will be able to safely transit around the area and the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect owners and operators of pleasure craft engaged in

recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected portion of the San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–183 to read as follows:

§ 165.T11–183 Safety Zone; Waters surrounding Berth 7 at the Port of Oakland, San Francisco Bay, California.

(a) *Location.* This temporary safety zone is established for the waters of the San Francisco Bay. It includes all waters

extending from the surface area to the sea floor within approximately 50 yards seaward from the moored vessel M/V ZHEN HUA 18 and encompasses all waters in an area created by connecting the following geographical positions:

Latitude	*Longitude*
37°49′08″ N	122°19′07″ W
37°49′05″ N	122°19′30″ W
37°49′15″ N	122°18′52″ W
37°49′18″ N	122°18′56″ W

and along the shoreline back to the beginning point. These coordinates are based upon NAD 83.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 12 p.m. on April 14, 2009, through 11:59 p.m. on April 24, 2009.

Dated: April 13, 2009.

P.M. Gugg,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. E9–9167 Filed 04–21–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0222]

RIN 1625–AA00

Safety Zone; April to May Naval Underwater Detonation; Northwest Harbor, San Clemente Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the Northwest Harbor of San Clemente Island in support of the Naval Underwater Detonation. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective from April 1, 2009 through June 1, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0222 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0222 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Kristen Beer, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Kristen.A.Beer@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of commercial and recreational vehicles in the vicinity of the Naval Underwater Detonation on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

The Officer in Charge (OIC) of the Southern California Offshore Range will be conducting intermittent training involving the detonation of military grade explosives underwater throughout April and May 2009. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activity.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from April 1, 2009 through June 1, 2009. The limits of the safety zone will be the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33.02′06″ N, 118.35′36″ W; 33.02′00″ N, 118.34′36″ W; thence along San Clemente shoreline to 33.02′06″ N, 118.35′36″ W. This safety zone is necessary to ensure non-authorized personnel and vessels remain safe by keeping clear of the hazardous area during the training activities. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial and recreational vessels will not be allowed to transit through the designated safety zone during the specified times while training is being conducted.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of commercial and recreational vessels intending to transit or anchor in a portion of the Northwest Harbor of San Clemente Island from April 1, 2009 through June 1, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can pass safely around the safety zone. Although the safety zone will apply to the harbor, commercial and recreational vessels will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will issue a broadcast notice to mariners (BNM) alert.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the temporary establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295; 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new temporary § 165.T11–173 to read as follows:

§ 165.T11–173 Safety Zone; April to May Naval Underwater Detonation; Northwest Harbor, San Clemente Island, CA.

(a) *Location.* The limits of the safety zone will include the navigable waters of the Northwest Harbor of San Clemente Island bounded by the following coordinates: 33.02′06″ N, 118.35′36″ W; 33.02′00″ N, 118.34′36″ W; thence along the coast of San Clemente Island to 33.02′06″ N, 118.35′36″ W.

(b) *Enforcement Period.* This section will be enforced from 12 a.m. on April 1, 2009 through 12 a.m. on June 1, 2009. If the training is concluded prior to the scheduled termination time, the COTP will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definitions apply to this section:

(1) *Designated representative* means any Commissioned, Warrant, or Petty Officer of the Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the COTP.

(2) *Non-authorized personnel and vessels,* means any civilian boats, fishermen, divers, and swimmers.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the COTP San Diego or his designated representative.

(2) Non-authorized personnel and vessels requesting permission to transit through the safety zone may request authorization to do so from the COTP San Diego or his designated representative. They may be contacted on VHF–FM Channel 16, or at telephone number (619) 278–7033.

(3) Naval units involved in the exercise are allowed in confines of the established safety zone.

(4) All persons and vessels shall comply with the instructions of the Coast Guard COTP or his designated representative.

(5) Upon being hailed by U.S. Coast Guard or other official personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(6) The Coast Guard may be assisted by other federal, state, or local agencies and the U.S. Navy.

Dated: March 27, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–9166 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 233

Mail Covers

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The U.S. Postal Service is amending the Code of Federal Regulations to revise the definitions of sealed mail and unsealed mail to reflect current classifications.

DATES: *Effective Date:* June 1, 2009.

FOR FURTHER INFORMATION CONTACT: Lawrence Katz, Inspector in Charge, Office of Counsel, U.S. Postal Inspection Service, 202–268–7732.

SUPPLEMENTARY INFORMATION: The current mail cover regulations provide definitions for sealed and unsealed mail. Certain words used (*e.g.*, second-class, third-class, and fourth-class mail) no longer reflect current classifications. The definitions of sealed and unsealed mail are revised to mirror mail classification definitions found in the Mailing Standards of the United States Postal Service, Domestic Mail Manual, and in the International Mail Manual.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Crime, Law enforcement, Penalties, Privacy.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR part 233 as set forth below:

PART 233—[AMENDED]

■ 1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104–208).

■ 2. In § 233.3, the definitions of *sealed mail* and *unsealed mail* in paragraphs (c)(3) and (c)(4) are revised to read as follows;

§ 233.3 Mail covers.

* * * * *

(c) * * *

(3) *Sealed mail* is mail which under postal laws and regulations is included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Sealed mail includes: First-Class Mail; Priority Mail; Express Mail; Express Mail International; Global Express Guaranteed items containing only documents; Priority Mail International flat-rate envelopes and small flat-rate boxes; International Priority Airmail, except M-bags; International Surface Air Lift, except M-bags; First-Class Mail International; Global Bulk Economy, except M-bags; certain Global Direct mail as specified by customer contract; and International Transit Mail.

(4) *Unsealed mail* is mail which under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Unsealed mail includes: Periodicals; Standard Mail; Package Services; incidental First-Class Mail attachments and enclosures; Global Express Guaranteed items containing non-documents; Priority Mail International, except flat-rate envelopes and small flat-rate boxes; International Direct Sacks—M-bags; certain Global Direct mail as specified by customer contract; and all items sent via ''Free Matter for the Blind or Handicapped''

under 39 U.S.C. 3403–06 and International Mail Manual 270.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–9158 Filed 4–21–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0528; FRL–8895–3]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets, and 2002 Base Year Emissions Inventory; Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) and Emissions Inventory requirements of the Clean Air Act (CAA) for the Houston-Galveston-Brazoria (HGB) moderate 1997 8-hour ozone nonattainment area. EPA is also approving the RFP motor vehicle emissions budgets (MVEBs) associated with the revision. EPA is approving the SIP revision because it satisfies the RFP and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate and demonstrates the required progress in reducing ozone precursors. EPA is approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: This direct final rule will be effective June 22, 2009 without further notice unless EPA receives relevant adverse comments by May 22, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0528, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*.
- Follow the online instructions for submitting comments.
- EPA Region 6 ''Contact Us'' Web site: *http://epa.gov/region6/r6coment.htm*. Please click on ''6PD (Multimedia)'' and select ''Air'' before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov*. Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0528. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we'', ''us'', or ''our'' is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?

We are approving a revision to the Texas SIP, submitted to meet the Emissions Inventory and RFP requirements of the CAA for the HGB moderate 1997 8-hour ozone nonattainment area. The revision was adopted by the State of Texas on May 23, 2007 and submitted to EPA on May 30, 2007. We are approving the 2002 Base Year Emissions Inventory, the 15% RFP plan, and the RFP 2008 MVEBs. The RFP plan demonstrates that oxides of nitrogen (NO_X) emissions will be

reduced at least 15 percent for the period of 2002 through 2008. The volatile organic compound (VOC) MVEB is 86.77 tons per day (tpd), and the NO_X emissions budget is 186.13 tpd. We are approving the SIP revision because it satisfies the Emissions Inventory and RFP requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates the necessary further progress in reducing ozone precursors.[1] We are approving the MVEBs included in this plan because these levels of motor vehicle emissions have been shown to be consistent with meeting the RFP requirements. We are approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on June 22, 2009 without further notice unless we receive relevant adverse comment by May 22, 2009. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the national ambient air quality standards (NAAQS) established by EPA. NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit regulations and control strategies to EPA for approval and incorporation into the federally enforceable SIP.

III. What Is the Background for This Action?

Inhaling even low levels of ozone, a key component of urban smog, can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis and asthma, and reduce lung capacity. VOC and NO_X are known as ''ozone precursors'', as VOCs react with NO_X, oxygen, and sunlight to form ozone. The CAA requires that areas not meeting the NAAQS for ozone demonstrate RFP in reducing emissions of ozone precursors.

EPA promulgated, on July 18, 1997, a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).[2] On April 30, 2004, EPA published designations and classifications for the revised 1997 8-hour ozone standard (69 FR 23936). HGB was classified as a moderate nonattainment area under the 1997 8-hour ozone standard on June 15, 2004. The HGB 1997 8-hour nonattainment area consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties. On November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727), EPA published the Phase 2 final rule for implementation of the 8-hour standard that addressed, among other things, the RFP control and planning obligations as they apply to areas designated nonattainment for the 1997 8-hour ozone NAAQS. In the Phase 1 Rule, RFP was defined in § 51.900(p) as meaning for the purposes of the 1997 8-hour NAAQS, the progress reductions required under sections 172(c)(2), 182(b)(1), 182(c)(2)(B) and 182(c)(2)(C) of the CAA. In section 51.900(q), rate of progress (ROP), was defined as meaning for purposes of the 1-hour NAAQS, the progress reductions required under sections 172(c)(2), 182(b)(1), 182(c)(2)(B), and 182(c)(2)(C) of the CAA (see 69 FR 23997).

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court modified the scope of vacatur of the Phase 1 Rule. See 489 F.3d 1245 (DC Cir. 2007), *cert. denied,* 128 S.Ct. 1065 (2008). The court vacated those portions of the Phase 1 Rule that provide for regulation of the 1997 8-hour ozone NAAQS in some nonattainment areas under subpart 1 in lieu of subpart 2. The decision held that EPA must retain the following 1-hour ozone NAAQS measures: New source review, section 185 penalties, and contingency plans for failure to meet RFP and attainment milestones. The decision does not affect the requirements for areas classified under subpart 2, such as the HGB area, to submit a reasonable further progress plan for the 1997 8-hour ozone NAAQS. Litigation on the Phase 2 Rule is pending before the DC Circuit Court of Appeals.

Section 182 of the CAA and EPA's 1997 8-hour ozone regulations[3] require a state, for each 1997 8-hour ozone nonattainment area that is classified as moderate, to submit an emissions inventory and a RFP plan to show how the state will reduce emissions of ozone precursors. The HGB moderate 1997 8-hour ozone nonattainment area has a maximum attainment date of June 15, 2010, that is beyond five years after designation. In addition, the HGB area has an approved 15% VOC Rate of Progress plan under the 1-hour ozone standard (November 14, 2001, 66 FR 57160). (Rate of Progress refers to reasonable further progress for the 1-hour ozone standard.) For a moderate area with an attainment date of more than five years after designation, the RFP plan must obtain a 15% reduction in ozone precursor emissions for the first six years after the baseline year (2002 through 2008).

Pursuant to CAA section 172(c)(9), RFP plans must include contingency measures that will take effect without further action by the state or EPA, which includes additional controls that would be implemented if the area fails to reach the RFP milestones. While the CAA does not specify the type of measures or quantity of emissions

[1] We reclassified the HGB nonattainment area too severe on October 1, 2008 (73 FR 56983). As a result of the reclassification, a revised RFP SIP is required in addition to the RFP SIP that we are acting on today.

[2] EPA issued a revised 8-hour ozone standard on March 27, 2008 (73 FR 16436). The designation and implementation process for that standard is just starting and does not affect EPA's action here.

[3] Reasonable further progress regulations are at 40 CFR 51.910, and emissions inventory regulations are at 40 CFR 51.915.

reductions required, EPA provided guidance interpreting the CAA that implementation of these contingency measures would provide additional emissions reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) in the year following the RFP milestone year. For more information on contingency measures, please, see the April 16, 1992 General Preamble (57 FR 13498, 13510) and the November 29, 2005 Phase 2 8-hour ozone standard implementation rule (70 FR 71612, 71650). RFP plans must also include MVEBs, which are the allowable on-road mobile emissions an area can produce and continue to demonstrate RFP.

On May 23, 2007 Texas adopted as a SIP revision the RFP plan for the HGB area and submitted it to us on May 30, 2007. The plan documents a 15% NO_X emission reduction in the HGB nonattainment area for the period between 2002 and 2008, and includes a 2002 baseline emissions inventory, MVEBs for 2008, and contingency measures. On June 15, 2007, we received a request from Governor Perry seeking voluntary reclassification of the HGB area. The Governor requested that we reclassify the HGB area from a moderate nonattainment area to a severe nonattainment area under the 8-hour ozone standard. We reclassified the area to severe on October 1, 2008 (73 FR 56983). Reclassification of the area to severe will require Texas to develop and submit a revised RFP SIP. For an area classified as severe, the required emissions reductions for VOC and/or NO_X are 18% for the six-year period following the baseline emissions inventory year (2002), and an average of 3% per year for all remaining three-year periods after the first six-year period out to the area's attainment date (40 CFR 51.910(a)(1)(B)). The reclassification to severe set a new attainment date as expeditiously as practicable, but no later than June 15, 2019. Therefore, the revised RFP plan will have to address the years post 2008. Today's action addresses the plan for moderate ozone nonattainment area requirements for the years 2002 to 2008.

IV. What Is EPA's Evaluation of the Revision?

EPA has reviewed the revision for consistency with the requirements of EPA regulations. A summary of EPA's analysis is provided below. For a full discussion of our evaluation, please see our TSD.

A. Texas Has an Approvable Base Year Emissions Inventory

CAA sections 172(c)(3) and 182(a)(1) require an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Texas has developed a 2002 base year emissions inventory for the HGB nonattainment area. The 2002 base year emissions inventory includes all point, area, non-road mobile, and on-road mobile source emissions. EPA reviewed the emission inventory and determined that it is approvable because it was developed in accordance with EPA guidance on emission inventory preparation. Table 1 lists the 2002 base year emissions inventory for the HGB area. For more detail on how emissions inventories were estimated, see the TSD.

TABLE 1—HGB 2002 RFP BASE YEAR EMISSIONS INVENTORY

2002 Base year inventory (tons/day)		
Source type	NO_X	VOC
Point	339.48	297.12
Area	40.15	219.51
On-road Mobile	283.20	114.30
Non-road Mobile	167.74	112.37
Total	830.57	743.30

B. Adjusted Base Year Inventory and 2008 RFP Target Levels

The 2002 base year emissions inventory referenced above is the starting point for calculating RFP. Next, CAA section 182(b)(2)(C) explains that the baseline from which emission reductions are calculated should be determined as outlined pursuant to section 182(b)(1)(B). Section 182(b)(1)(B) and 40 CFR 51.910 require that the base year inventory must be adjusted to exclude certain emissions specified in section 182(b)(1)(D). This requires that the baseline exclude emission reductions due to Federal Motor Vehicle Control Programs (FMVCP) promulgated by the Administrator by January 1, 1990, and emission reductions due to the regulation of Reid Vapor Pressure promulgated by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990. These measures are not creditable.

The result (after the adjustment) is the ''adjusted base year inventory.'' The required RFP 15% reduction is calculated by multiplying the adjusted base year inventory by 0.15. This figure is subtracted from the adjusted base year inventory, resulting in the target level of emissions for the milestone year (2008). Table 2 features a summary of the adjusted base year inventory (row c), required 15% reductions (row d), and 2008 target level of emissions (row e), as described above. Texas relied on reductions of NO_X emissions to demonstrate RFP.

TABLE 2—CALCULATION OF HGB REQUIRED NO_X TARGET LEVEL OF EMISSIONS

Description	NO_X (tons/day)
a. 2002 Emission Inventory	830.57
b. Non-creditable Reductions, 2002–2008	42.20
c. 2002 Adjusted to 2008 (a − b)	788.37
d. 15% Reductions (c × 0.15)	118.26
e. 2008 Target (c − d)	670.11

C. The 2008 Projected Emissions Inventories and How the Total Required 15% Reductions Are Achieved

Next, section 182(b)(1)(A) requires that states need to provide sufficient control measures in their RFP plans to offset any emissions growth. To do this the state must estimate the amount of growth that will occur between 2002 and the end of 2008. The state uses population and economic forecasts to estimate how emissions will change in the future. Generally, Texas followed our standard guidelines in estimating the growth in emissions. EPA's MOBILE 6.2.03 model was used to develop the 2008 on-road inventory. For more detail on how emissions growth was estimated, see the TSD. Texas terms the projections of growth as the RFP 2008 Uncontrolled Inventories.

Texas then estimates the projected emission reductions from the control measures in place between 2002 and the end of 2008 and applies these to the RFP 2008 Uncontrolled Inventories; the results are the RFP 2008 Controlled Inventories. The total amount of NO_X emissions in the RFP 2008 Controlled Inventories must be equal to or less than the 2008 target inventories (listed at row e in Table 2 above). The RFP plan relies on a number of state and federal control measures intended to reduce NO_X emissions. The control measures address emissions from point, area, mobile non-road, and mobile on-road sources.

The majority of point source NO_X reductions are from the mass emissions cap and trade (MECT) program for utility boilers, turbines, duct burners, heaters and furnaces, IC engines, and industrial boilers. The HGB area did not rely upon any area source controls for NO_X reductions.

Non-road emission reductions are from federal controls on non-road engines. The mobile non-road emission reductions were estimated using the NONROAD 2005 model, with customized data files to reflect emissions generated by non-road mobile equipment in Texas. Emissions from locomotives, aircraft and support equipment, and commercial marine vessels were calculated outside of the NONROAD 2005 model using EPA approved methodologies. EPA finds that Texas' projected emissions and emission reductions for these three non-road mobile sources are acceptable.

Reductions in mobile on-road emissions resulted from the post-1990 FMVCP, reformulated gasoline, Texas' inspection and maintenance program, and the Texas low emission diesel program. Each of the State measures relied upon in this plan have been approved in separate actions. See the TSD for more details.

As a result, for NO_X the target level of emissions is 670.11 tpd, and the 2008 projected emissions inventory (after RFP reductions are applied) is 553.96 tpd. Since all reductions are accomplished with NO_X reductions, there is no VOC reduction requirement for the area. As illustrated in Table 3, the 2008 projection inventory after RFP reductions is less than the target level of emissions. Therefore, the control measures included in the 2008 projected emissions are adequate to meet the 15% RFP requirement.

TABLE 3—SUMMARY OF RFP DEMONSTRATION FOR HGB

Inventory	NO_X (tons/day)
2008 Target	670.11.
2008 Uncontrolled Emissions	1026.63.
2008 RFP Emission Reductions	472.67.
2008 Projected Emissions after RFP Reductions.	553.96.
RFP Met?	Yes.

D. The Reasonable Further Progress Plan Includes Acceptable RFP Contingency Measures

The 1997 8-hour ozone RFP plan for a moderate nonattainment area must include contingency measures, which are additional controls to be implemented if the area fails to make reasonable further progress. Contingency measures are intended to achieve reductions over and beyond those relied on in the RFP demonstration and could include federal and state measures already scheduled for implementation. The CAA does not preclude a state from implementing such measures before they are triggered. EPA interprets the CAA to require sufficient contingency measures in the RFP submittal, so that upon implementation of such measures, additional emission reductions of up to 3% of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved between the milestone year of 2008 and the next calendar year, *i.e.,* 2009.

Texas used federal and state measures currently being implemented to meet the contingency measure requirement for the HGB RFP SIP. These measures, which are the same measures used for RFP, provide reductions that are in excess of those needed for RFP. As shown in Table 4, the excess reductions are greater than 3% of the adjusted base year inventory. Therefore these reductions are sufficient as contingency measures.

TABLE 4—RFP CONTINGENCY MEASURE DEMONSTRATION FOR HGB RFP SIP

Description	NO_X (tons/day)
a. Adjusted Base Year Inventory (from Table 2).	788.37.
b. 3% Needed for Contingency ($a \times 0.03$).	23.65.
c. Excess Reductions Used for Contingency.	47.25.
d. Contingency Met?	Yes.

E. The RFP Milestone 2008 MVEBs Are Approvable

The 1997 8-hour ozone RFP plan must include MVEBs for transportation conformity purposes. The MVEB is the mechanism to determine if the future transportation plans conform to the SIP. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, delay reaching reasonable further progress milestones, or delay timely attainment of the NAAQS. A MVEB is the maximum amount of emissions allowed in the SIP for on-road motor vehicles. The MVEB establishes an emissions ceiling for the regional transportation network. The HGB RFP SIP contains VOC and NO_X MVEBs for the RFP milestone year 2008. The emissions budget for VOC is 86.77 tpd, and the NOx emissions budget is 186.13 tpd. On-road emissions must be shown in future transportation plans to be less than the MVEBs for 2008 and subsequent years. The VOC and NO_X RFP emissions budgets are acceptable: when added to the other components of the 2008 emissions inventory (including non-road, stationary source, and area source emissions), the total level of emissions is below the 2008 RFP emissions target level. We found the RFP MVEBs (also termed transportation conformity budgets) adequate, and on June 28, 2007, the availability of these budgets was posted on our Web site for the purpose of soliciting public comments. The comment period closed on July 30, 2007, and we received no comments. On March 21, 2008, we published the Notice of Adequacy Determination for these RFP MVEBs (73 FR 15152). Once determined adequate, these RFP budgets must be used in future HGB transportation conformity determinations. The adequacy determination represents a preliminary finding by EPA of the acceptability of the MVEBs. Today, we are finding the MVEBs are fully consistent with RFP, and the RFP plan is fully approvable, as it sets the allowable on-road mobile emissions the HGB area can produce and continue to demonstrate RFP.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: April 10, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The second table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding two new entries to the end of the table for ''Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets'' and ''2002 Base Year Emissions Inventory'', for the Houston-Galveston-Brazoria, TX area. The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Comments
* *	* *	*	*	*
Approval of the 1997 8-hour Ozone 15% Reasonable Further Progress Plan, and 2008 RFP Motor Vehicle Emission Budgets.	Houston-Galveston-Brazoria, TX.	05/23/07	04/22/09 [Insert *FR* page number where document begins].	
2002 Base Year Emissions Inventory	Houston-Galveston-Brazoria, TX.	05/23/07	04/22/09 [Insert *FR* page number where document begins].	

[FR Doc. E9–9216 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 76
Wednesday, April 22, 2009

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[PRM–50–89; NRC–2007–0018]

Raymond A. West; Consideration of Petition in Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Closure of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received a petition for rulemaking dated December 14, 2007, and revised on December 19, 2007, filed by Raymond A. West (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM–50–89. The petitioner is requesting that the NRC amend the regulations that govern domestic licensing of production and utilization facilities at nuclear power plants. Specifically, the petitioner is requesting that the regulations that govern codes and standards at nuclear power plants be amended to provide applicants and licensees a process for requesting NRC approval of changes or modifications to American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) cases that are listed in the relevant NRC-approved regulatory guides cited in the current regulations. The petitioner believes that the current requirements do not allow changes or modifications to be proposed as alternatives to NRC-approved ASME Code cases. This action provides notice that the NRC will consider the petitioner's request in the NRC's rulemaking process.

DATES: The petition for rulemaking docketed as PRM–50–89 is closed on April 22, 2009.

ADDRESSES: The NRC is not soliciting comments at this time. Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, *http://www.regulations.gov,* by searching on rulemaking docket ID: [NRC–2007–0018].

You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under the following rulemaking docket ID: [NRC–2007–0018].

NRC's Public Document Room: The public may examine, and have copied for a fee, publicly available documents at the NRC's Public Document Room (PDR), Public File Area, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–1423 or Toll-Free: 1–800–368–5642 or by e-mail: *Mark.Padovan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The NRC has received a petition for rulemaking dated December 14, 2007, as revised on December 19, 2007, submitted by Raymond A. West (petitioner). The petitioner requests that the NRC amend 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.'' Specifically, the petitioner requests that 10 CFR 50.55a, ''Codes and Standards,'' be amended to permit licensees and applicants to directly request approval of an alternative for changes to NRC-approved ASME Code cases.

The NRC determined that the petition met the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition was docketed by the NRC as PRM–50–89 on December 26, 2007.

II. Discussion of the Petition

The petitioner states that 10 CFR 50.55a currently provides no defined provisions to allow applicants or licensees to request changes or modifications to ASME Code cases listed in NRC Regulatory Guides 1.84, 1.147, or 1.192 that NRC has approved for use under §§ 50.55a(b)(4), (b)(5), and (b)(6).

The petitioner states that requirements in § 50.55a(a)(3) for proposing alternatives to the requirements in § 50.55a(a) are limited to the requirements in paragraphs (c), (d), (e), (f), and (g) of that section. The petitioner further states that alternatives to requirements in § 50.55a(b) are not permitted. The petitioner believes that although these requirements were appropriate for many years, when §§ 50.55a(b)(4), (b)(5), and (b)(6) were added, § 50.55a(a)(3) could no longer be used for ''direct approval'' of changes or modifications to NRC-approved ASME Code cases.

The petitioner notes that ASME Code cases are written by ASME to provide alternatives to existing requirements or to introduce new technologies or methodologies. The petitioner states that it typically takes 4 years for a particular ASME Code case to be accepted for generic use by applicants or licensees in regulatory guides. Most applicants or licensees are willing to wait for generic approval because of the estimated minimum $12,000 cost to request approval of a particular ASME Code case before it is accepted for use in a regulatory guide. The petitioner states that, in many instances when an attempt is made to use a newly-approved ASME Code case, there are one or two requirements in the code case that cannot be met because:

(1) The need for the ASME Code case has broadened beyond the scope of the approved case,

(2) The committee that developed the ASME Code case did not foresee all possible uses of a particular case, or

(3) Limitations at a particular site may preclude using an ASME Code case without modification.

The petitioner is concerned that problems occur when there is an immediate need to use an ASME Code case that contains most of the requirements needed to resolve an issue

but cannot be used without a modification. The petitioner cites an effort to mitigate primary water stress corrosion cracking (PWSCC) in Alloy 82/182 welds after an ASME Code case was approved by the NRC for use in the appropriate regulatory guide for weld overlay of stainless steel material but not for austenitic nickel-based material that was subject to potential PWSCC. The petitioner states that this issue resulted in licensees having to perform a ''work-a-round'' by requesting usage of some ASME Code cases with modifications. The petitioner has concluded that use of ASME Code cases with modifications cannot be performed under § 50.55a(a)(3).

The petitioner describes the ''work-a-round'' that is accepted by the NRC is for an applicant or licensee to propose an alternative to the governing ASME Code requirements, such as using ASME Code Section XI requirements, instead of requesting usage of an ASME Code case with a change or modification. The petitioner states that the NRC allows this type of alternative under § 50.55a(a)(3) because the provisions of § 50.55a(g) govern use of ASME Code Section XI. The petitioner states that, if the need for an alternative is urgent, the only choice an applicant or licensee has is to perform the ''work-a-round'' described above that the petitioner states has been done routinely. The petitioner has concluded that the NRC has determined that no mechanism for evaluating a licensee's proposal to an existing NRC approved voluntary alternative is allowed by § 50.55a(a)(3) because it would be ''providing an alternative to an alternative.''

The petitioner has proposed draft rulemaking text to address these issues. The petitioner states that his proposed amendments to § 50.55a will clarify this regulation to correct administrative issues associated with alternatives to ASME Code cases when an urgent issue arises that cannot be solved under the current regulatory provisions.

III. NRC Review of the Petition

The NRC reviewed the issues raised by the petitioner and determined the following:

- Code cases often provide alternatives that have technical merit and, in many instances, are incorporated into future ASME Code editions.
- The ASME Code case process itself constitutes a method of how a licensee can seek to obtain ASME approval for a variation of a previously-approved code case. § 50.55a(a)(3) currently provides specific approaches for obtaining NRC approval of alternatives to ASME Code provisions. Inasmuch as ASME Code cases are analogous to ASME Code provisions, it is not unreasonable to provide an analogous regulatory approach for obtaining NRC approval of alternatives to ASME Code cases.

For these reasons, the NRC has determined that the issues raised in this petition should be considered in the NRC's Common Prioritization of Rulemaking process. The NRC uses this process to determine which rulemaking actions to pursue based on available resources and how the actions maintain safety, ensure security of nuclear facilities and materials, increase effectiveness, and maintain openness with stakeholders. Members of the public can track the progress of the issues raised in the petition as they go through the rulemaking process via the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936),'' or online at *http://www.regulations.gov;* search on rulemaking docket ID NRC–2007–0018. The changes requested in the petition may or may not be incorporated into 10 CFR 50.55a exactly as requested. With this action, PRM–50–89 is considered resolved and administratively closed.

Dated at Rockville, Maryland, this 3rd day of April 2009.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. E9–9197 Filed 4–21–09; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

16 CFR Part 317

[Project No. P082900]

RIN 3084-AB12

Prohibitions on Market Manipulation in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007

AGENCY: Federal Trade Commission.

ACTION: Revised notice of proposed rulemaking; request for public comment.

SUMMARY: Pursuant to Section 811 of Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (''EISA''),[1] the Federal Trade Commission (''Commission'' or ''FTC'') is issuing a Revised Notice of Proposed Rulemaking (''RNPRM''). The revised proposed Rule in this RNPRM would prohibit any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from knowingly engaging in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person, or intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product. Violations of the revised proposed Rule, if such Rule is adopted, would require proof by a preponderance of the evidence. Anyone violating an FTC rule promulgated under Section 811 of EISA, such as this revised proposed Rule would be if adopted, may face civil penalties of up to $1 million per violation per day, in addition to any relief available to the Commission under the Federal Trade Commission Act (''FTC Act'').[2] The Commission invites written comments on issues raised by the revised proposed Rule and seeks answers to the specific questions set forth in Section IV.I. of this RNPRM.

DATES: Written comments must be received by May 20, 2009. The Commission does not contemplate any extensions of this comment period.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Market Manipulation Rulemaking, P082900'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2).

[1] Section 811 is part of Subtitle B of Title VIII of EISA, which has been codified at 42 U.S.C. 17301-17305.

[2] 15 U.S.C. 41-58.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[3]

Because paper mail in the Washington area, and specifically to the FTC, is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-marketmanipulationRNPRM*), (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-marketmanipulationRNPRM*). If this RNPRM appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov/opa/2009/04/rnprm.shtm*) to read the RNPRM and the news release describing it.

A comment filed in paper form should include the ''Market Manipulation Rulemaking, P082900'' reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission, Market Manipulation Rulemaking, P.O. Box 2846, Fairfax, VA 22031-0846. This address does not accept courier or overnight deliveries. Courier or overnight deliveries should be delivered to: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex G), 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Patricia V. Galvan, Deputy Assistant Director, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580, (202) 326-3772.

SUPPLEMENTARY INFORMATION:

I. Background

EISA became law on December 19, 2007.[4] Subtitle B of Title VIII of EISA targets market manipulation in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, and the reporting of false or misleading information related to the wholesale price of those products. Specifically, Section 811 prohibits ''any person'' from ''directly or indirectly'': (1) using or employing ''any manipulative or deceptive device or contrivance,'' (2) ''in connection with the purchase or sale of crude oil gasoline or petroleum distillates at wholesale,'' (3) that violates a rule or regulation that the FTC ''may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.''[5]

Section 812 prohibits ''any person'' from reporting information that is ''required by law to be reported''—and that is ''related to the wholesale price of crude oil gasoline or petroleum distillates''—to a federal department or agency if the person: (1) ''knew, or reasonably should have known, [that] the information [was] false or misleading;'' and (2) intended such false or misleading information ''to affect data compiled by the department or agency for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.''[6]

Subtitle B also contains three additional sections that address, respectively, enforcement of the Subtitle (Section 813),[7] penalties for violations of Section 812 or any FTC rule published pursuant to Section 811 (Section 814),[8] and the interplay between Subtitle B and existing laws (Section 815).[9]

The revised proposed Rule in this RNPRM retains the anti-fraud approach of the initial proposed Rule published by the Commission in a Notice of Proposed Rulemaking (''NPRM'') on August 19, 2008.[10] The revised proposed Rule would achieve the anti-manipulation objectives of Section 811 by prohibiting any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, from (a) knowingly engaging in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person, or (b) intentionally failing to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product.[11]

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[3] *See also* FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[4] 42 U.S.C. 17001-17386.

[5] 42 U.S.C. 17301.

[6] 42 U.S.C. 17302.

[7] Section 813(a) provides that Subtitle B shall be enforced by the FTC ''in the same manner, by the same means, and with the same jurisdiction as though all applicable terms of the [FTC] Act (15 U.S.C. 41 *et seq.*) were incorporated into and made a part of [Subtitle B].'' Section 813(b) provides that a violation of any provision of Subtitle B ''shall be treated as an unfair or deceptive act or practice proscribed under a rule issued under [S]ection 18(a)(1)(B) of the [FTC] Act (15 U.S.C. 57a(a)(1)(B)).'' 42 U.S.C. 17303.

[8] Section 814(a) of Subtitle B provides that—''[i]n addition to any penalty applicable'' under the FTC Act—''any supplier that violates [S]ection 811 or 812 shall be punishable by a civil penalty of not more than $1,000,000.'' Further, Section 814(c) provides that ''each day of a continuing violation shall be considered a separate violation.'' 42 U.S.C. 17304.

[9] Section 815(a) provides that nothing in Subtitle B ''limits or affects'' Commission authority ''to bring an enforcement action or take any other measure'' under the FTC Act or ''any other provision of law.'' Section 815(b) provides that ''[n]othing in [Subtitle B] shall be construed to modify, impair, or supersede the operation'' of: (1) any of the antitrust laws (as defined in Section 1(a) of the Clayton Act, 15 U.S.C. 12(a)), or (2) Section 5 of the FTC Act ''to the extent that . . . [S]ection 5 applies to unfair methods of competition.'' Section 815(c) provides that nothing in Subtitle B ''preempts any State law.'' 42 U.S.C. 17305.

[10] FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 48317 (Aug. 19, 2008). The NPRM was preceded by the publication for comment of an Advance Notice of Proposed Rulemaking (''ANPR''). FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of The Energy Independence and Security Act of 2007*, 73 FR 25614 (May 7, 2008).

[11] As the Commission stated in the ANPR and the NPRM, the phrase ''crude oil gasoline or petroleum distillates'' is used without commas in Section 811 (as well as in the first clause of Section 812), while the phrase is used with commas in Section 812(3): ''crude oil, gasoline, or petroleum distillates.'' The absence of commas is presumably a non-substantive, typographical error; therefore, the

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The Commission believes additional public comment on the revised proposed Rule will assist in evaluating the desirability and contours of any final rule. The Commission requests that comments focus on changes between the initially proposed Rule and the revised proposed Rule. The Commission also invites written responses to, and comments on, the questions and alternative rule language posed in Section IV.I. Because the public has already had the opportunity to comment on many of the concepts contained in this revised proposed Rule—through both written comments and workshop presentations and participation—the Commission believes that a 30-day comment period is appropriate, and requests for extension of the comment period are unlikely to be granted.

II. The Rulemaking Proceeding

The rulemaking proceeding began with the publication of an ANPR on May 7, 2008.[12] In the ANPR, the Commission solicited comments on whether it should publish a rule under Section 811, and, if so, the appropriate scope and content of such a rule.[13] In response to the ANPR, the Commission received 155 comments from interested parties.[14] Commenters expressed differing views regarding the desirability of, and appropriate legal basis for, any such rule. Commenters also proposed a variety of models upon which to base a market manipulation rule, including those used by other federal agencies, such as the Securities and Exchange Commission (''SEC''),[15] the Federal Energy Regulatory Commission (''FERC''),[16] and the Commodity Futures Trading Commission (''CFTC''),[17] pursuant to each agency's respective market manipulation authority.

After reviewing the ANPR comments, on August 19, 2008, the Commission published an NPRM, setting forth the text of a proposed Rule and inviting written comments on issues raised by the proposed Rule.[18] The NPRM described the basis for and scope of the proposed Rule; definitions of terms in the Rule; conduct prohibited by the Rule; and the elements of a cause of action under the Rule. The NPRM also set forth questions designed to elicit further information from interested parties. In response to a petition from a major trade association,[19] the Commission extended the deadline for submission of comments on the NPRM from September 18, 2008 to October 17, 2008.[20]

In response to the NPRM, the Commission received 34 comments from interested parties, including consumers, a consumer advocacy group, academics, a federal agency, state government agencies, a Member of Congress, industry members, and trade and bar associations.[21] On November 6, 2008, Commission staff held a one-day public workshop on the proposed Rule.[22] Commenters and workshop participants provided valuable feedback on several key issues relating to the proposed Rule, particularly regarding the application of a rule based on SEC Rule 10b-5 and the relevance of legal precedent under securities law to the petroleum industry. An overview of the major issues reflected in the comments and at the workshop follows.

Many commenters expressed general support for an anti-fraud rule, noting that fraud provides a ''good demarcation'' for a market manipulation rule and would provide the necessary guidance to market participants.[23] Although a few commenters affirmatively supported the Commission's proposed Rule, as articulated in the NPRM,[24] the majority of commenters raised concerns about the scope and application of the proposed Rule. Many commenters thought that the proposed Rule, as drafted, created a substantial risk of reaching and chilling legitimate conduct undertaken in the ordinary course of business.[25]

To remedy perceived shortcomings in the proposed Rule, some commenters suggested modifications, including: (1) rejecting SEC Rule 10b-5 as a model for an FTC rule,[26] and (2) making other

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Commission reads all parts of both sections to cover all three types of products: crude oil, gasoline, and petroleum distillates. *See* 73 FR at 25621 n.59; 73 FR at 48320 n.40.

[12] 73 FR 25614. Rulemaking documents can be found at (*http://www.ftc.gov/ftc/oilgas/rules.htm*).

[13] 73 FR at 25620-24. The comment period for the ANPR closed on June 23, 2008, after the Commission granted an extension requested by a major industry trade association. Letter from the American Petroleum Institute to FTC Secretary Donald S. Clark, (May 19, 2008), *available at* (*http://www.ftc.gov/os/comments/marketmanipulation/index.shtm*).

[14] Attachment C contains a list of commenters who submitted comments on the ANPR, together with the abbreviations used to identify each commenter referenced in this RNPRM. Electronic versions of the comments can be found at (*http://www.ftc.gov/os/comments/marketmanipulation/index.shtm*).

[15] *See* Securities Exchange Act of 1934 (''SEA'') 10(b), 15 U.S.C. 78j(b); 17 CFR 240.10b-5 (''Rule 10b-5'').

[16] *See* Natural Gas Act 4A, 15 U.S.C. 717c-1; Federal Power Act 222, 16 U.S.C. 791a; Prohibition of Natural Gas Market Manipulation, 18 CFR 1c.1; Prohibition of Electric Energy Market Manipulation, 18 CFR 1c.2.

[17] *See* Commodity Exchange Act (''CEA'') 9(a)(2), 7 U.S.C. 13(a)(2).

[18] 73 FR 48317.

[19] Letter from the American Petroleum Institute to FTC Secretary Donald S. Clark, (Sept. 5, 2008), *available at* (*http://www.ftc.gov/os/comments/marketmanipulation2/538416-00006.pdf*).

[20] FTC, *Prohibitions On Market Manipulation and False Information in Subtitle B of Title VIII of The Energy Independence and Security Act of 2007*, 73 FR 53393 (Sept. 16, 2008).

[21] Attachment A contains a list of commenters who responded to the NPRM, together with the abbreviations used to identify each commenter. In calculating the number of comments submitted in response to the NPRM, the Commission treated the multiple filings from Argus, CFA, CFDR, ISDA, and NPRA as a single comment for each commenter.

[22] Attachment B contains a list of participants in the workshop, together with the abbreviations used to identify each workshop participant. The discussion topics for the workshop included the use of SEC Rule 10b-5 as a model for an FTC market manipulation rule; the proper scienter standard for a rule; the appropriate reach of a rule; the type of conduct that would violate a rule; and the desirability of including market or price effects as an element of a rule violation. Information relating to the workshop, including a program, transcript, and archived webcast, can be found at (*http://www.ftc.gov/bcp/workshops/marketmanipulation/index.shtml*).

[23] CFDR (Mills), Tr. at 38; *see, e.g.*, API at 8-9 (''[S]upport[ing] the Commission's initial determination that the scope of the rule should be 'narrowly tailored to address fraudulent practices.'''(quoting 73 FR at 48320)); NPRA at 2 (stating that a rule should target fraudulent and deceptive practices); PMAA (Bassman), Tr. at 46-47 (explaining that, in general, fraud is an appropriate basis for a Section 811 rule); ATAA at 11 (expressing support for the Commission's decision to propose an anti-fraud rule); *see also* ISDA (Velie), Tr. at 40 (expressing support for an anti-fraud rule if it is coupled with specific intent); ABA Energy (McDonald), Tr. at 246 (urging the Commission to focus a rule on deceptive conduct).

[24] *See, e.g.*, MS AG at 3 (''[T]he scope of the proposed Rule is well tailored to ensure that it will address . . . concerns without deterring desirable market practices that could ultimately benefit consumers.''); PMAA at 3 (''The proposed rule allows regulated entities to understand both its intent and how it will be applied . . . .''); CA AG at 2 (expressing support for the FTC's proposed Rule).

[25] *See, e.g.*, Flint Hills at 3 (''[T]he breadth of the proposed rule would create a significant amount of uncertainty as to what conduct may be captured by the Rule, and could apply to completely legitimate conduct . . . .''); API at 9 (arguing that the proposed Rule ''would create substantial legal uncertainty for market participants'' that will ''deter[] firms from engaging in legitimate activity''); Sutherland at 2 (stating that the proposed Rule ''is considerably more intrusive of legitimate business behavior than is necessary''); Plains at 3 (''Given the general nature of the proposed rule and the uncertainties that will exist with respect to its scope and applicability, the imposition of liability without any finding of an effect on the market . . . will restrict legitimate market activity . . . .''); NPRA at 3 (stating that ''the proposed Rule falls far short of the Commission's goal'' of prohibiting '''manipulative and deceptive conduct *without discouraging pro-competitive or otherwise desirable market practices*''' (quoting 73 FR at 48323)) (emphasis added by commenter).

[26] *See, e.g.*, Sutherland at 4 (''We believe that the Commission is mistaken in proposing to adopt the [SEC Rule] 10b-5 anti-fraud model . . . .''); API at 11 (arguing against borrowing, without modification, the language and precedent of Rule 10b-5); ISDA at 6 (stating that ''[s]ecurities precedent does not provide a helpful framework'' for creating a Section 811 rule); NPRA at 2 (stating that an SEC-based rule

changes in the text of the proposed Rule.[27] Commenters also offered recommendations regarding the elements of proof the Commission should require in order to establish a rule violation. Specifically, the commenters discussed: (1) whether a showing of recklessness should be sufficient to establish the requisite level of scienter required by a rule;[28] (2) whether a showing of price effects should be required in order to prove a rule violation;[29] and (3) whether prohibiting statements that are misleading because they omit material facts is appropriate for a rule that applies to wholesale petroleum markets.[30]

Commenters also presented varying views regarding the proper reach of an FTC market manipulation rule.[31] A few commenters believed that the proposed Rule should reach conduct other than fraud, and these commenters suggested that the Commission should modify the focus of the proposed Rule[32] or amend it to reach specific types of conduct.[33] Most argued that an FTC market manipulation rule should not reach activity in futures markets.[34] Several offered views as to whether an FTC rule should reach pipelines[35] or renewable fuels, including ethanol.[36] The Commission has considered these comments and, where appropriate, has revised the initial proposed Rule to address these concerns.

III. Basis for the Rule

Section 811 of EISA provides the legal basis for any petroleum market manipulation rule. Section 811

is ''not an appropriate or workable model for an FTC market manipulation rule that applies to wholesale petroleum markets''); Plains at 2 (''The types of protective rules and doctrines that may be appropriate for the securities markets . . . cannot simply be applied without modification to the petroleum markets.'').

[27] *See, e.g.*, NPRA at 17, 31 (recommending modifications to the proposed Rule's text and also suggesting alternative rule language); Navajo Nation at 7-9 (urging that the Commission define the term ''manipulative'' in the proposed Rule); API at 11 (requesting that the Commission modify the text of the proposed Rule to account for differences between wholesale petroleum and securities markets).

[28] Many commenters urged the Commission to require a showing of specific intent instead of recklessness to prove a violation of an FTC rule. *See, e.g.*, CFDR at 4 (recommending that an FTC rule require a ''[specific] intent to cause a false, fictitious and artificial impact on market prices or market activity''); ISDA at 3-4 (urging the Commission to require proof of specific intent rather than recklessness); NPRA at 18 (stating that a recklessness standard is not appropriate for wholesale petroleum markets); Sutherland at 5 (encouraging the Commission to require specific intent rather than recklessness); Muris at 11 (recommending that the Commission require proof of specific intent); *see also* Argus at 2 (stating that ''a specific intent requirement would encourage those who already provide market data to index publishers to continue to do so''); API at 16 (stating that the proposed Rule's recklessness standard ''is not sufficient . . . to 'ensure that the proposed Rule does not chill competitive behavior''' (citing 73 FR at 48328)). *But see, e.g.*, SIGMA at 2 (stating that the association is content with the scienter requirement that the FTC has adopted in its proposed Rule); MS AG at 3 (stating that ''both intentional and reckless conduct should be covered by the scienter requirement''); CAPP at 1 (commending the Commission's proposed scienter requirement, which is designed to avoid chilling legitimate business behavior); ATAA at 12 (expressing support for the FTC's proposed scienter requirement); PMAA at 3-4 (stating that the Commission's proposed elements of proof provide ''needed clarity''); CA AG at 2-3 (supporting the scienter standard proposed in the NPRM).

[29] Many commenters supported the showing of price effects as an element of a cause of action under an FTC market manipulation rule. *See, e.g.*, Van Susteren at 2 (''The lack of a requirement of a showing of price effects to establish culpability leaves the rule overbroad and risks inconsistent or unwarranted enforcement efforts by the Commission.''); ISDA at 3-4 (asking that the Commission require proof of price effects); Muris at 2 (encouraging the Commission to adopt an effects requirement); *see also* Plains at 3 (urging the Commission to make clear that only conduct that has a ''manipulative effect on the relevant market'' will be actionable); API at 34 (recommending that the Commission require ''proof that a party's deceptive or fraudulent conduct caused market conditions to deviate materially from the conditions that would have existed but for that conduct''); Sutherland at 6 (urging the FTC to ''require that market manipulation actually impact the market''). *But see, e.g.*, MS AG at 3 (asserting ''that proof of price effects should not be required to establish a violation''); ATAA at 12 (supporting the FTC's decision not to require proof of price effects); IPMA at 4 (''[A]gree[ing] that the proposed Rule should not require proof of an identifiable price effect.''); CA AG at 3 (expressing support for the Commission's decision not to include an effects requirement).

[30] Several commenters argued that, although the proposed Rule's omissions language may be appropriate in securities markets, differences exist between securities and wholesale petroleum markets that make such language inapplicable to the latter. *See, e.g.*, API at 25 (stating that unlike wholesale petroleum markets, securities markets are ''are governed by detailed disclosure obligations designed to protect unsophisticated investors''); Muris at 2 (urging the FTC to ''avoid importing broad disclosure requirements from highly regulated markets that simply have no place in wholesale petroleum markets''); NPRA at 4 (arguing that the full disclosure rationale underlying SEC Rule 10b-5 does not fit wholesale petroleum markets); Plains at 3 (stating that in the crude oil markets, unlike securities markets, ''there is no presumption that one market participant owes any duties to its counterparties that would require disclosure of any information'').

[31] *See, e.g.*, Boxer at 1 (advocating for a rule to reach ''oil traded on the [NYMEX] and ICE exchanges''); API at 22-23 (''[T]he Commission should, at a minimum, provide a safe harbor for statements or omissions that are not made in connection with 'reporting . . . to government agencies, to third-party reporting services, and to the public through corporate announcements,' at least absent concrete evidence that such statements or omissions were part of a broader scheme to manipulate a market.'' (citing 73 FR at 48326)); Platts at 8 (asking that the Commission adopt a safe harbor to alleviate concerns that the Commission could capture inadvertent errors under an FTC rule); *see also* Argus at 3 (''The FTC should also refrain from mandating any particular methodological approach for the assessment of spot markets in petroleum.'').

[32] *See, e.g.*, Pirrong at 2 (asserting that the proposed Rule's focus on fraud and deceit is misguided and contending that market power is the biggest threat to efficiently functioning petroleum markets); CFA2 at 19 (urging the Commission to take ''vigorous action to reign in the speculative bubble'' in energy commodities markets); Consumer (urging the Commission to address excessive speculation in commodities markets); Navajo Nation at 3 (expressing concern that the proposed Rule may fall short in addressing manipulative conduct).

[33] *See, e.g.*, NPCA at 1; MPA at 2; IPMA at 3-4 (requesting that the Commission treat an oil company's decision to sell only gasoline pre-blended with ethanol at the terminal rack as a potentially manipulative practice); Murkowski at 1 (recommending that the Commission use its authority to address anti-competitive conduct in circumstances in which ''a single company gains exclusive control of energy-related infrastructure . . . for moving domestic crude to a consuming market'').

[34] *See, e.g.*, CFTC (Arbit) at 1 (urging the Commission to ''incorporate an exception from its rule for commodity futures and options trading activity on regulated futures exchanges''); CFTC (Chilton) at 2; CFDR at 8 (asking that the Commission refrain from encroaching on the CFTC's exclusive jurisdiction over futures transactions); Brown-Hruska at 8-9 (''[I]t is my hope that the Commission will narrow the focus of the rule tightly upon manipulative and deceptive conduct in the wholesale petroleum markets [to avoid overlap with the CFTC].''); ISDA at 14 (''[T]he Commission should clarify that it will refer to the CFTC any manipulative activity that it becomes aware of that does not directly involve a wholesale, physical petroleum products transaction.''); MFA at 2 (recommending that the Commission adopt a safe harbor for futures markets activities); Sutherland at 2 (urging the Commission to reconsider its decision to reach futures markets activities under any Section 811 rule). *But see, e.g.*, Pirrong at 8 (noting that objections that ''FTC actions against manipulation will interfere with the [CFTC's] jurisdiction over commodity market manipulation . . . are moot, because Congress has decided otherwise''); CA AG at 3 (''EISA . . . provide[s] the FTC with the power to monitor for and prevent fraud and deceit in the commodity futures market, insofar as it affects oil and gas futures.''); CFA2 at 19 (urging the Commission to take ''vigorous action to reign in the speculative bubble and return the futures markets to their proper role to improve the functioning of physical commodity markets'').

[35] ATAA at 4-5 (asserting that the FTC properly concluded that oil pipelines are subject to the proposed Rule); IPMA at 4 (''We agree that Commission jurisdiction should extend to pipelines.''). *But see* AOPL at 1 (urging the Commission to revise its proposed Rule ''to clarify that it does not apply to interstate common carrier oil pipelines regulated by the [FERC] under the Interstate Commerce Act ('ICA')'').

[36] *See, e.g.*, ATA at 3 (urging the Commission to ''expand the scope of [the proposed Rule] to include alternative and renewable energy markets''); IPMA at 4 (agreeing that ''manipulation of non-petroleum based commodities such as ethanol'' that affect the price of gasoline should be ''subject to Commission enforcement''); NPRA (Drevna), Tr. at 221-22 (agreeing that the Commission should reach blending components that are inputs to gasoline or diesel); SIGMA (Columbus), Tr. at 222-23 (agreeing that mandated alternative fuels and components should be covered under a rule). *But see* MFA at 3 (asking that the Commission exclude from the Rule's coverage ethanol and commodities that may be used in the process of making ethanol ''that are the subject of futures and options trading'').

prohibits ''any person'' from ''directly or indirectly'' using or employing ''any manipulative or deceptive device or contrivance''—in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale—that violates a rule or regulation that the Commission ''may prescribe'' ''as necessary or appropriate in the public interest or for the protection of United States citizens.''[37]

The Commission has carefully considered concerns raised by commenters about the propriety of a rule.[38] Most of the commenters who addressed the rulemaking standard agreed generally that a Section 811 rule would be necessary or appropriate, and that it would be in the public interest to combat fraud in wholesale petroleum markets.[39] A few commenters, however, specifically questioned the necessity or appropriateness of the proposed Rule.[40] Sutherland, for example, argued that the proposed Rule failed to ''balance the Congressional directive for regulatory oversight with the goal of allowing economic efficiency,'' and was ''more intrusive of legitimate business behavior than is necessary.''[41] NPRA stated that the proposed Rule's reliance on SEC Rule 10b-5 and related legal precedent as a model would create confusion and potentially discourage procompetitive activity, and, thus, would be neither necessary nor appropriate in the public interest.[42]

As stated in the NPRM, Section 811 of EISA targets manipulative or deceptive conduct in wholesale petroleum markets. In enacting this provision, Congress specifically authorized the Commission to determine whether a rule would be appropriate and in the public interest. Based upon its experience and perspective from several decades of protecting consumers and analyzing competition in petroleum markets, the Commission believes that it is both appropriate and in the public interest to publish a revised proposed rule prohibiting fraudulent and deceptive conduct in wholesale petroleum markets that serves no legitimate purpose.

To achieve these objectives, the revised proposed Rule defines, for market participants, the Section 811 statutory prohibition of the use or employment of any ''manipulative or deceptive device or contrivance.''[43] Like the initially proposed Rule, the revised proposed Rule would prohibit conduct that injects false information into market transactions. However, the revised proposed Rule more precisely identifies the conduct prohibited, and thus achieves a more appropriate balance between consumer protection interests and compliance burdens.[44] Consequently, the Commission believes that it is both appropriate and in the public interest to publish the revised proposed Rule.

IV. Discussion of the Revised Proposed Rule

A. The Revised Proposed Rule is an Anti-Fraud Rule

The Commission stated in the NPRM that its proposed Rule was modeled on the SEC's broad, anti-fraud Rule 10b-5.[45] The Commission further stated that it intended to rely on only relevant SEC precedent in applying its rule.[46] Although some commenters supported this approach, others raised concerns about basing a rule on SEC Rule 10b-5. The revised proposed Rule retains the anti-fraud concept of SEC Rule 10b-5, but it is further tailored to wholesale petroleum markets. The following discussion addresses the use of SEC Rule 10b-5 as a model, and provides Commission responses to commenter concerns about this approach. The Commission invites written comments on the revised proposed Rule, particularly regarding the modifications made to the initially proposed Rule, and responses to the questions in Section IV.I.

Many commenters expressed general support for an anti-fraud rule, contending that a fraud standard would provide necessary guidance to market participants.[47] A few commenters specifically endorsed the proposed Rule as articulated in the NPRM, without modification.[48] Some commenters also

[37] 42 U.S.C. 17301; *see also* 73 FR at 48320.

[38] Some commenters opined on the meaning of the language ''in the public interest or for the protection of United States citizens'' in the ANPR. *See, e.g.*, CFDR, ANPR, at 4-5 (''The public interest and the protection of U.S. citizens . . . are best served by the adoption of a clear legal standard for market manipulation that will allow market participants to conduct their business with a clear understanding of the relevant legal boundaries.''); MFA, ANPR, at 17 (''FTC rules that purport to overlap with CFTC exclusive jurisdiction would not serve the public interest.''); Flint Hills, ANPR, at 17-18 (stating that the statutory language—''in the public interest''—reflects Congress' intention that the Commission draw upon its long experience in articulating ''the public interest'' under its other statutes).

[39] *See, e.g.*, ATAA at 3 (noting that the proposed Rule is necessary to guard against conduct that undermines the integrity of petroleum markets); MS AG at 2 (''The proposed Rule will benefit consumers significantly because market manipulation can artificially inflate prices of petroleum products and cause consumers to pay more for essential goods, such as gasoline.''); IPMA at 4 (''The proposed Rule does meet the rulemaking standard that it is 'necessary or appropriate in the public interest or for the protection of United States[] citizens.'''); *see also* PMAA at 2 (stating that the proposed Rule fulfilled ''the Commission's intention to, 'prohibit manipulative and deceptive conduct without discouraging pro-competitive or otherwise desirable market practices''' (quoting 73 FR at 48323)); ATA at 2 (supporting the proposed Rule ''as an additional tool to help preserve the integrity of vital energy markets'').

[40] Most commenters directed their comments to the application of the Rule, rather than to whether the proposed Rule met the rulemaking standard articulated in Section 811.

[41] Sutherland at 2.

[42] NPRA at 15-16; *see also* API at 1 (arguing that a rule is unnecessary because ''repeated FTC investigations have found no evidence of significant harmful or illegal conduct [in petroleum markets]'').

[43] 42 U.S.C. 17301.

[44] Several commenters expressed concern that a lack of clarity about the type of conduct covered by the proposed Rule could chill legitimate conduct, owing to potentially significant monetary penalties that might be imposed for any violation. *See, e.g.*, API at 9-10 n.12 (''[V]iolations of a market manipulation rule would expose market participants to substantial monetary penalties. This significantly increases the risk of chilling desirable practices as companies seek to minimize the risk of liability.''); Muris at 2 (arguing that the necessary generality of the proposed Rule, ''[c]oupled with the extraordinarily high penalties . . . creates the risk of chilling legitimate business decisions''); NPRA at 3 (arguing that the harsh penalties associated with a Section 811 rule and the uncertainty created by the proposed application of SEC precedent, ''would prompt corporate compliance systems that would impair the procompetitive and cost-efficient functioning of wholesale petroleum markets'').

[45] 73 FR at 48322.

[46] 73 FR at 48322 (stating that the Commission ''[was] not invoking the entire body of SEC law in this rulemaking, but rather the anti-fraud provisions of SEC Rule 10b-5'').

[47] *See, e.g.*, CFDR (Mills), Tr. at 38-39 (''From my point of view, fraud is a good demarcation for any antimanipulation rule, because it provides a basis by which people can govern themselves and know with some understanding of what kind of conduct is going to violate a rule or not.''); API (Long), Tr. at 33 (stating that ''in general, fraud is a useful limiting concept''); PMAA (Bassman), Tr. at 47 (''[U]sing fraud . . . is very clear, because none of the people operating in this market operate without the benefit of legal counsel. Any legal counsel understands the concept of fraud, and fraud does belong here.''); ATAA at 11 (stating that the ''proposed rule properly contains a broad anti-fraud provision''); ABA Energy (McDonald), Tr. at 246 (urging the Commission to ''focus on deceptive conduct that hinders the operations of markets by misleading participants''); *see also* ISDA (Velie), Tr. at 40 (''[W]e think fraud is a good standard, as long as it's coupled with specific intent to manipulate a market.''); Flint Hills (Hallock), Tr. at 46 (''I think it's important to keep a focus, though, on the aim of the fraud, and the aim of the fraud that I believe that the agency has been looking for is fraud upon a market . . . .''); NPRA at 2 (''NPRA endorses the FTC's determination that implementation of the EISA should be accomplished through a rule against fraud and deception that harms the competitive functioning of wholesale petroleum markets and, ultimately, consumers.'').

[48] *See, e.g.*, MS AG at 2 (''The proposed Rule will benefit consumers significantly because market manipulation can artificially inflate prices of petroleum products and cause consumers to pay

agreed with the Commission's decision to model the proposed Rule after SEC Rule 10b-5.[49] For example, SIGMA argued that a SEC Rule 10b-5 model would ''ensure[] consumer protection while affording business owners a wealth of certainty with respect to their market practices.''[50] A few commenters expressly embraced the Commission's decision to use the legal precedent under SEC Rule 10b-5 for guidance in interpreting a Section 811 rule.[51]

Other commenters expressed concern about the Commission's reliance on SEC Rule 10b-5 language and its legal precedent.[52] Generally, these commenters argued that the legal precedent developed under SEC Rule 10b-5 cannot be divorced from the language of Rule 10b-5 itself.[53] They contended that securities markets are characterized by legal relationships of trust and an emphasis on full disclosure which do not exist in wholesale petroleum markets.[54] These commenters argued that relying upon SEC Rule 10b-5 legal precedent therefore would create confusion and uncertainty as to what conduct would violate the proposed Rule.[55] Some commenters asserted that, as a result, the proposed Rule potentially would chill legitimate business conduct, and that its uncertain scope would make it difficult for companies to create effective programs for compliance with the Rule.[56]

Many commenters offered modifications to the proposed Rule intended to adapt it to wholesale petroleum markets.[57] Commenters who urged the Commission to diverge from SEC Rule 10b-5 legal precedent suggested revising the proposed Rule to include express language requiring both a showing of specific intent—to satisfy the scienter requirement[58]—and a showing of price effects.[59] Some commenters recommended that the Commission draw instead upon legal precedent construing the CEA.[60] Others argued that an anti-fraud manipulation rule would not go far enough, or that it should reach different types of conduct.[61] One commenter, for example, suggested that the rule should target the exercise of market power intended to benefit a derivatives

more for essential goods, such as gasoline.''); PMAA at 2 (stating that the proposed Rule prohibits manipulative and deceptive conduct without chilling pro-competitive behavior); CA AG at 2 (expressing support for the FTC's proposed Rule).

[49] *See, e.g.*, SIGMA at 2 (expressing support for the Commission's decision to base its proposed Rule on Rule 10b-5); ATAA at 11 (''[ATAA] supports the proposed rule's use of SEC Rule 10b-5 as the model for a rule designed to proscribe market manipulation.''); *see also* PMAA at 2 (supporting the Commission's decision not to ''slavishly follow[]'' the Rule 10b-5 model); Boxer at 1 (''I think it's [great] to have Rule 10b-5 essentially extended to the oil traded on the [NYMEX] and ICE exchanges . . . .'').

[50] SIGMA at 2.

[51] *See, e.g.*, CFDR at 2 (''The Commission . . . rightly looks to securities law precedents for guidance in shaping the legal standards and jurisprudence under EISA.''); ATAA at 11 (''[Rule 10b-5] provides the FTC with a well-developed framework to follow.'').

[52] As a threshold matter, some of these commenters disagreed with the Commission's tentative determination in the NPRM that the language of Section 811 indicated that the FTC should model a Section 811 rule after Rule 10b-5, arguing that if this had truly been the intent of Congress, it would have included an explicit directive in the statute similar to the directive in the FERC's anti-manipulation authority. *See* 15 U.S.C. 717c-1; 16 U.S.C. 824v; FERC, *Prohibition of Energy Market Manipulation*, 71 FR 4244, 4246 (Jan. 26, 2006). *See, e.g.*, NPRA at 15-16 (stating that the language of Section 811 does not require that the Commission model an FTC rule after SEC Rule 10b-5); API at 12 (''The language of Section 811 thus authorizes the Commission to take a different approach than the [FERC] . . . .''); ISDA at 6 (stating that, unlike the FERC's market manipulation statute, Section 811 does not contain express language directing it to rely on securities precedent).

[53] *See, e.g.*, API at 15 (''The Rule 10b-5 regulatory regime is deeply intertwined with the disclosure obligations imposed by Section 10(b) and other provisions of the SEA, the scope of which, in turn, are highly dependent on the fiduciary duties and obligations that exist between various market participants.''); *see also* ISDA at 7 (stating that disclosure requirements are ''[i]nterwoven and inextricably part of securities regulation'').

[54] *See, e.g.*, NPRA at 4, 7 (arguing that due to the absence of fiduciary and other duties and disclosure obligations in wholesale petroleum markets, it would be ''bad public policy to apply [Rule 10b-5] to purchasers or sellers in wholesale petroleum markets''); ISDA at 7 (stating that in the absence of legal trust relationships, it is unclear if Rule 10b-5 principles are applicable to wholesale petroleum markets); Pirrong Tr. at 36 (stating that a Rule 10b-5 case raises ''issues related to fiduciary duty that are inherent in the securities laws, but which are not really appropriate or really that relevant in a commodities context''); API at 25 (arguing that unlike wholesale petroleum markets, the securities marketplace is a regulated industry ''governed by detailed disclosure obligations designed to protect unsophisticated investors''); Plains at 3 (stating that in crude oil markets, unlike securities markets, ''there is no presumption that one market participant owes any duties to its counterparties that would require disclosure of any information'').

[55] *See, e.g.*, API at 9 (applying Rule 10b-5 precedent ''without any modification . . . would create confusion and chill pro-competitive behavior''); NPRA at 16 (''[A] blanket transfer of the language and precedent of Rule 10b-5 from securities markets to wholesale petroleum markets would likely create significant confusion and discourage procompetitive activity.'').

[56] *See, e.g.*, Flint Hills at 5 (stating that the proposed Rule does not ''provide practical, clear, articulate guidance to its staff, traders and others dealing on [its] behalf'' as to prohibited conduct); API at 8 (stating that the benefits of an FTC rule are outweighed by ''potentially significant compliance costs'' and the risk of ''interfer[ing] with the efficient functioning of petroleum markets and deter[ring] procompetitive, welfare-enhancing behavior''); NPRA at 3 (''[A]s drafted, the language of the proposed rule instead would prompt corporate compliance systems that would impair the procompetitive and cost-efficient functioning of wholesale petroleum markets.''); *see also* ISDA at 9 (''Under the proposed Rule, market participants are likely to be concerned that their competitive trading strategies or inadvertent miscalculations may later be misconstrued by regulators . . . .'').

[57] API and NPRA suggested that the Commission retain the elements of a violation but not the language of the proposed Rule, or at least modify the language of the proposed Rule to clarify its application. API at 15-16; NPRA at 16-17 (stating that the elements of SEC Rule 10b-5 detached from securities precedent and with modifications are a ''better starting point'' for a rule rather than the specific language of Rule 10b-5); *see also* API at 12 (''The language of Section 811 thus authorizes the Commission . . . to modify the Rule 10b-5 regime in light of its extensive experience with the petroleum industry.''); ISDA at 6 (stating that, unlike the FERC's market manipulation statute, Section 811 does not contain express language directing it to rely on securities precedent).

[58] Some commenters recommended that the Commission adopt the CEA's specific intent standard. *See, e.g.*, ISDA at 10-11 (stating that the CEA's intent requirement is better suited for commodities markets than the FTC's proposed scienter requirement); API at 21-22 (advocating for a specific intent standard similar to that of the CEA); *see also* NPRA at 32 (stating that the proposed Rule should require specific intent in order to harmonize the proposed Rule with the CFTC's market manipulation authority); CFDR at 7 (stating that a specific intent standard ''would substantially help to harmonize the legal standard between the Commission's rule and the CFTC's interpretation of the CEA'').

[59] *See, e.g.*, ISDA at 3-4 (asking that the Commission require proof of price effects); Plains at 3 (urging the Commission to make clear that only conduct that has a ''manipulative effect on the relevant market'' will be actionable); API at 34 (recommending that the Commission require ''proof that a party's deceptive or fraudulent conduct caused market conditions to deviate materially from the conditions that would have existed but for that conduct'').

[60] A few commenters asserted that the standards applied to commodities markets, including futures commodities markets, under the CEA are more applicable to petroleum markets than is securities legal precedent. *See, e.g.*, ISDA at 11 (stating that CEA ''precedent is much more analogous to the markets the EISA seeks to protect''); API at 15 (urging the Commission to ''draw on relevant commodities law precedents in addition to elements of Rule 10b-5''); *see also* Brown-Hruska at 4 (''[T]he mission of the Commission is more analogous to that of the commodities market regulator, the CFTC, which has the responsibility to ensure that the prices derived from and used by futures markets are fair and free from fraud and manipulation.''). *See generally* Pirrong at 5 (recommending that the Commission follow a modified CEA price manipulation model). *But see* NPRA (DeSanti), Tr. at 251 (''I want to be explicit that the NPRA does not support using [a] CEA model here.'').

[61] *See, e.g.*, Navajo Nation (Piccone), Tr. at 37-38 (arguing that a rule should address nonfraudulent, manipulative acts such as a refiner denying producers access to other markets); Navajo Nation at 3 (seeking confirmation that an FTC rule ''will be applied to prohibit all manipulative conduct that artificially distorts wholesale petroleum markets or undermines incentives to find and develop reserves of domestic crude oil''); *see also* CFA (Cooper), Tr. at 160 (stating that fraud is too narrow a focus and the proposed Rule also should cover market power issues); CFA2 at 8 (urging the FTC to ''identify and attack the broad range of practices and structural conditions that can and have been moving prices in the markets'').

position.[62] Other commenters specifically urged the Commission to prohibit refiners and suppliers from refusing to sell unblended gasoline to distributors.[63]

Based on the rulemaking record developed thus far, as well as its extensive experience with the petroleum industry, the Commission believes that modifying the proscriptions of the initially proposed Rule will better focus it on wholesale petroleum markets, which differ significantly from securities markets. As explained in the ANPR and the NPRM, the conduct prohibition in Section 811 is identical to language found in SEA Section 10(b), which prohibits the use of any ''manipulative or deceptive device or contrivance.''[64] The Commission believes that this language directs the agency to be guided by SEC Rule 10b-5,[65] a broad anti-fraud rule.[66] However, the inclusion of the language ''as necessary or appropriate'' in Section 811 further directs the Commission to use its expertise to tailor the rule in a manner appropriate for wholesale petroleum markets.[67]

The Commission has modified the initially proposed Rule after considering comments provided during the public comment period and at the public workshop. The modifications should clarify the requirements imposed by the revised proposed Rule for market participants. The Commission recognizes that, in the absence of a more extensive regulatory scheme, the omissions provision in Section 317.3 of the initially proposed Rule could discourage legitimate business conduct in wholesale petroleum markets that benefits consumers. Therefore, the Commission has consolidated the three subsections of Section 317.3 into two subsections, and has added language both to sharpen its focus on fraudulent and deceptive conduct and to reduce potential adverse effects on legitimate business conduct. Specifically, the Commission has added an explicit scienter standard for each subsection of Section 317.3, and has added language to the omissions provision now contained in Section 317.3(b) to ensure that it prohibits only the omission of material facts that is both misleading under the circumstances and distorts or tends to distort market conditions for the covered products.

The Commission has retained the general anti-fraud prohibition contained in Section 317.3(c) of the initially proposed Rule in revised proposed Section 317.3(a). Thus, revised proposed Section 317.3(a) would prohibit any person from knowingly engaging in conduct—including making any untrue statement of material fact—that operates or would operate as a fraud or deceit on any person. Revised proposed Section 317.3(a) would not prohibit omissions of material facts. Such omissions would instead be covered by revised proposed Section 317.3(b), which would prohibit any person from intentionally failing to state a material fact which both makes a given statement misleading under the circumstances and distorts or tends to distort market conditions for a covered product. These modifications are intended to eliminate redundancy and more precisely define the conduct that revised proposed Rule Section 317.3 would prohibit; that is, fraudulent or deceptive conduct that injects false information into wholesale petroleum market transactions.

The Commission believes that this framework best reflects both congressional intent and the nature of the markets covered by the revised proposed Rule. The Commission recognizes, however, that this approach may be too narrow to prevent all manipulative conduct. The Commission therefore does not foreclose the possibility of extending the scope of any final rule in the future if new information or enforcement experience warrant such modifications.

B. Section 317.1: Scope

Section 813 provides the Commission with the same jurisdiction and power under Subtitle B of EISA as does the FTC Act, 15 U.S.C. 41 *et seq.*[68] With certain exceptions, the FTC Act provides the agency with jurisdiction over nearly every economic sector. Because EISA does not expand or contract coverage under the FTC Act, any ''person'' currently subject to the Commission's jurisdiction—that is, any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity—would be covered by the revised proposed Rule. Conversely, any ''person'' not subject to Commission jurisdiction under the FTC Act would also not be subject to Commission jurisdiction under the revised proposed Rule.

In response to the NPRM, some commenters asked the Commission to clarify the jurisdictional scope of any final rule. With respect to pipelines, one commenter, AOPL, asserted that ''interstate common carrier oil pipelines regulated by the FERC under the ICA are exempt from Commission jurisdiction'' and should be excluded from the coverage of any FTC rule.[69] AOPL

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[62] Pirrong at 2-5 & n.2 (defining ''derivatives'' to include ''exchange-traded futures contracts, and options on futures, and forward and options contracts traded in the over-the-counter . . . market'').

[63] MPA at 2 & n.1 (noting that MPA's members share the experiences described by IPMA and TOMA in their ANPR comments and IPMA in its NPRM comment, and that distributors and retailers can often obtain more competitive prices if they buy unblended gas separately from ethanol, which they then add to the gasoline before selling it at retail); *see also* NPCA at 1; IPMA at 2-3. MPA also recommended that the Commission reach the aforementioned conduct, which has ''an adverse effect on competition'' under an FTC rule. MPA at 2. The Commission does not intend to focus on anti-competitive conduct in its application of the final Rule, which remains the province of antitrust law. The approach is consistent with Section 815 of EISA. *See* 42 U.S.C. 17305(b); *see also* ABA Energy (McDonald), Tr. at 244 (arguing that the final Rule should not reach conduct that is already covered by the antitrust laws, such as the unilateral exercise of market power).

[64] *See* 73 FR at 25619; 73 FR at 48322. The anti-manipulation authority granted to the FERC also contains the identical conduct prohibition, and the statute granting that authority explicitly directed the FERC to rely upon SEA Section 10(b) in defining the terms ''manipulative or deceptive device or contrivance.'' *See* 15 U.S.C. 717c-1; 16 U.S.C. 824v.

[65] The language of Section 811 reflects congressional intent that the Commission look to SEC Rule 10b-5 in crafting a market manipulation rule. *See Evans v. United States*, 504 U.S. 255, 260 n.3 (''[I]f a word is obviously transplanted from another legal source, whether the common law or legislation, it brings the old soil with it.''') (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)); *Morissette v. U.S.*, 342 U.S. 246, 263 (1952) (noting where Congress borrows terms of art it ''presumably knows and adopts the cluster of ideas that were attached to each borrowed word''); *see also National Treasury Employees Union, et al. v. Chertoff*, 452 F.3d 839, 858 (D.C. Cir. 2006) (stating that ''there is a presumption that Congress uses the same term consistently in different statutes'').

[66] *Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971) (stating that preserving the integrity of securities markets is one of the purposes of Rule 10b-5); *U.S. v. Russo*, 74 F.3d 1383, 1391 (2d Cir. 1996) (''[F]rauds which 'mislead[] the general public as to the market value of securities' and 'affect the integrity of the securities markets' . . . fall well within [Rule 10b-5].'') (citations omitted); *In re Ames Dep't Stores, Inc. Stock Litig.*, 991 F.2d 953, 966 (2d Cir. 1993) (stating that frauds affecting the integrity of securities markets fall under Rule 10b-5).

[67] To do otherwise would violate a canon of statutory construction. *See TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (''It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'''') (citations omitted).

[68] Section 813(a) of EISA provides that Subtitle B shall be enforced by the FTC ''in the same manner, by the same means, and with *the same jurisdiction* as though all applicable terms of the [FTC] Act (15 U.S.C. 41 *et seq.*) were incorporated into and made a part of [Subtitle B].'' 42 U.S.C. 17303 (emphasis added).

[69] AOPL at 1 & n.3 (urging the Commission to clarify that it will not apply a Section 811 rule to reach common carrier oil pipelines, defining ''oil pipelines'' to include crude oil and petroleum products pipelines).

further suggested that the Commission provide a ''safe harbor protecting oil pipelines against any culpability under the rule so long as they are acting in accordance with the ICA and FERC regulation of oil pipelines pursuant to the ICA.''[70] In support of this position, AOPL argued that the FERC already regulates pipelines extensively[71] and that the potential for manipulation of commodities prices by oil pipelines is small.[72] Another commenter, ATAA, opposed any safe harbors or exemptions for pipelines in order to give full effect to the purpose of EISA.[73] According to ATAA, it is important for the Commission to police this area because ''it is far from clear that FERC's jurisdiction extends to price manipulation,'' and because the ''FERC has never pursued 'price manipulation' claims'' against oil pipelines.[74]

In response, the Commission notes that not all pipelines necessarily fall outside the coverage of the FTC Act.[75] Certain pipeline companies or their activities may fall outside the coverage of the FTC Act to the extent that they are acting as ''common carriers.'' However, pipeline companies and their owners or affiliates are often involved in multiple aspects of the petroleum industry—including the purchase or sale of petroleum products, and the provision of transportation services—and they may engage in conduct in connection with wholesale petroleum markets covered by EISA.

FERC regulation of pipelines would be an insufficient basis upon which to exempt pipeline companies if they engage in prohibited conduct in connection with the wholesale purchase or sale of crude oil, gasoline, or petroleum distillates. The Commission therefore must assess on a case-by-case basis whether any particular ''person'' as defined in the revised proposed Rule—or any conduct at issue—may fall outside the scope of the revised proposed Rule, and/or whether the conduct at issue falls under the ''in connection with'' language in the revised proposed Rule, which is discussed below.

Some commenters argued that any final rule should not extend to fraud in futures markets, as the Commission had proposed. Many of these commenters observed that the CFTC has exclusive jurisdiction pursuant to Section 2(a)(1)(A) of the CEA,[76] and that the Commission should therefore grant a safe harbor for futures markets activities.[77] These commenters argued in particular that Congress granted the CFTC exclusive jurisdiction over futures markets in order to create uniform rules and to avoid applying inconsistent legal standards to futures markets.[78] They further argued that if an FTC rule applied to futures trading, market participants could face duplicative and possibly inconsistent enforcement by multiple agencies based on the same conduct.[79] One commenter maintained that if the Commission declined to adopt a safe harbor, the Commission should harmonize any final rule with the elements of a cause of action for price manipulation under the CEA, which are not part of the statutory provision.[80]

At this time, the Commission does not intend to adopt a blanket safe harbor for futures market activities. Nonetheless, the Commission recognizes the CFTC's jurisdiction ''with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery.''[81] Consistent with its longstanding practice of coordinating its enforcement efforts with other federal or state law enforcement agencies where it has overlapping or complementary jurisdiction, the Commission intends to work cooperatively with the CFTC in furtherance of the Commission's duty to prevent fraud in wholesale petroleum markets.[82]

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[70] AOPL at 14.

[71] AOPL asserted that comprehensive regulation of oil pipelines by the FERC makes regulation by the FTC under any final rule ''neither necessary nor appropriate in the public interest or for the protection of U.S. citizens.'' AOPL at 11.

[72] AOPL at 11-12 (contending that ''there is little or no potential for manipulation of oil commodities prices on the part of oil pipelines'' because regulations and competition limit pipeline companies' ability to engage in anticompetitive conduct).

[73] ATAA at 4 (arguing that the Commission should reach manipulative conduct relating to oil pipelines in order to give full effect to EISA); *see also* Navajo Nation (Piccone), Tr. at 37-38 (arguing that Congress gave the FTC new authority to combat anti-competitive practices, including practices by pipelines); IPMA at 4 (''We agree that Commission jurisdiction should extend to pipelines.'').

[74] ATAA at 5 (asserting that the FERC ''exercises what at best can be described as 'light-handed' regulation of oil pipelines and [it] has never pursued 'price manipulation' claims at all''); *see also* Navajo Nation (Hollis), Tr. at 239 (explaining the FERC's limited authority over oil pipelines).

[75] Under the Clayton Act, the Commission has the power and authority to regulate mergers and acquisitions of pipelines. *See* Clayton Act, Sections 7 and 11, 15 U.S.C. 18, 21.

[76] Section 2 of the CEA states that ''[t]he [CFTC] shall have exclusive jurisdiction . . . with respect to accounts, agreements . . . and transactions involving contracts of sale of a commodity for future delivery . . . traded or executed on a contract market designated . . . pursuant to [S]ection 7 or 7a of this title'' of the CEA. 7 U.S.C. 2(a)(1)(A).

[77] *See, e.g.*, CFTC (Arbit) at 1 (''We again urge the FTC to incorporate an exception from its rule for commodity futures and options trading activity on regulated futures exchanges, which is subject to the CFTC's exclusive jurisdiction granted by the [CEA].''); CFTC (Chilton) at 2 (''I urge the FTC to incorporate an exception for futures trading subject to the exclusive jurisdiction of the CEA.''); MFA at 2 (urging the Commission on behalf of futures associations and exchanges to grant a safe harbor for futures and options trading). *But see* CA AG at 3-4 (advocating against application of safe harbors designed specifically to avoid overlap with the CFTC's regulatory jurisdiction and warning of potential jurisdictional limitations created by ''shackling the FTC with the restrictions placed upon CFTC authority''); ATAA at 4 (''[T]he rule proscribes 'manipulation or deceptive conduct' in a narrow and straightforward manner that does not 'improperly intrude upon the jurisdiction of the CFTC or any other agency.'''); Pirrong at 8 (noting that in giving the FTC market manipulation authority, Congress has in some respects rendered moot any questions of the FTC's interference with the CFTC's jurisdiction); CFA2 at 19-20 (urging the Commission to reach conduct in futures markets).

[78] *See, e.g.*, MFA at 3 (''Congress designed the CFTC's exclusive jurisdiction to make absolutely certain that the provisions of the CEA . . . would be the sole legal standards applicable to futures trading.''); CFTC (Arbit) at 3 (stating that Congress granted the CFTC exclusive jurisdiction over futures trading to avoid applying inconsistent standards to futures markets); *see also* CFDR at 9 (stating that it seems illogical to apply a rule specifically intended to govern activities in the commodities markets to futures markets); CFTC (Chilton) at 1 (stating that applying a Section 811 rule to futures markets ''would seriously undermine the Congressional grant of exclusive jurisdiction in the CEA, and impair the CFTC's ability to effectively oversee futures activity''); *see also* Sutherland at 2 (asserting that the proposed Rule ''impinges upon the [CFTC's] exclusive jurisdiction with respect to the futures and other purely financial markets'').

[79] *See, e.g.*, Sutherland at 2 (''The proposed rule creates a duplicative and potentially highly burdensome enforcement regime.''); CME (Dow), Tr. at 29 (explaining that application of an FTC rule to futures markets is a ''recipe for disaster . . . because it results in overlapping regulatory regimes by multiple regulators''); MFA at 3 (arguing that the legislative history and the language of CEA's exclusive jurisdiction provision demonstrates that Congress believed that applying conflicting or duplicative regulations to futures markets would ''impair the operations of U.S. futures markets''); Brown-Hruska at 8-9 (recommending that the Commission narrow the focus of the rule to manipulative and deceptive conduct in wholesale petroleum markets to avoid regulatory overlap ''that would give rise to legal uncertainty in the exchange-traded and over-the-counter derivative markets'').

[80] MFA at 3 (urging the Commission ''to avoid having [the Rule's] provisions contradict and conflict with CEA legal requirements'' by requiring specific intent and a showing of price effects as elements of an offense).

[81] 7 U.S.C. 2(a)(1)(A).

[82] This position is consistent with the views of commenters who urged the FTC to work with the CFTC where appropriate, including the CFTC itself. *See, e.g.*, CFTC (Arbit) at 3 (''[T]he CFTC looks forward to working in close cooperation with the FTC to efficiently prosecute illegal activity in the petroleum industry where our agencies share jurisdiction.''); Sutherland at 4 (''[C]ooperative arrangements in place between the FTC and CFTC . . . can be tailored to allow each agency to pursue the compliance matters within its greatest competence—the physical markets in the case of the FTC and the financial markets in the case of the CFTC.''); MFA at 9 (urging the Commission and the CFTC to coordinate enforcement in areas outside the CEA's exclusive jurisdiction provision for futures markets).

Finally, some commenters voiced the concern that if the Commission relies upon the text and judicial construction of SEC Rule 10b-5 language and securities law precedent, courts would be more inclined to find an implied private right of action under any final rule.[83] Commenters urged the Commission to clarify that any final rule would not create or imply a private right of action.[84] In response, the Commission notes that EISA does not expressly create a private right of action.[85] Whether a private right of action might be implied, however, is a question of legislative intent for Congress or the courts, not the Commission, to resolve.

C. Section 317.2: Definitions

The revised proposed Rule provides definitions for six terms: ''crude oil,'' ''gasoline,'' ''knowingly,'' ''person,'' ''petroleum distillates,'' and ''wholesale.'' Five of these terms were defined in the initial NPRM, and the definitions of those five terms herein remain largely the same as those in the initially proposed Rule.[86] In addition, the revised proposed Rule now includes a definition of the term ''knowingly.'' These definitions establish the scope of the revised proposed Rule's coverage and provide guidance as to the Commission's intended enforcement of the Rule.

Several commenters addressed the definitions proposed in the initial NPRM, and some of them also suggested additional definitions. These comments, together with the Commission analysis of the definitions that are included in the revised proposed Rule, are discussed below.

1. Section 317.2(a): ''Crude oil''

Section 317.2(a) of the initially proposed Rule defined ''crude oil'' to mean: ''the mixture of hydrocarbons that exist: (1) in liquid phase in natural underground reservoirs and which remain liquid at atmospheric pressure after passing through separating facilities, or (2) as shale oil or tar sands requiring further processing for sale as a refinery feedstock.''[87] As explained in the NPRM, the Commission intended the definition to include ''liquid crude oil and any hydrocarbon form that can be processed into a refinery feedstock,'' but to exclude ''natural gas, natural gas liquids, or non-crude refinery feedstocks.''[88]

Two commenters, PMAA and Navajo Nation, supported the proposed definition of ''crude oil,''[89] and no commenter provided a basis for changing it. Section 317.2(a) of the revised proposed Rule thus retains the substantive definition of ''crude oil'' in the initially proposed Rule. However, the definition in the revised proposed Rule has three non-substantive modifications.[90] Section 317.2(a) of the revised proposed Rule therefore defines ''crude oil'' as ''any mixture of hydrocarbons that exists: (1) in liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities, or (2) as shale oil or tar sands requiring further processing for sale as a refinery feedstock.''

2. Section 317.2(b): ''Gasoline''

Section 317.2(b) of the initially proposed Rule defined ''gasoline'' to mean: ''(1) finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends, and (2) conventional and reformulated gasoline blendstock for oxygenate blending.''[91] Three commenters generally supported the proposed definition.[92]

Several commenters offered views on whether ethanol or renewable fuels should be included as covered products under any final rule. Some of them expressed general support for including ethanol or renewable fuels.[93] One commenter specifically opposed including ethanol in the definition of ''gasoline.''[94]

Section 317.2(b) of the revised proposed Rule retains, without modification, the definition of ''gasoline'' in the initially proposed Rule. Consistent with its position in the NPRM, the Commission intends to capture those commodities regularly traded as finished gasoline products or as gasoline products requiring only oxygenate blending to be finished, under this definition.[95]

The Commission tentatively has determined not to treat products not listed in Section 811—such as renewable fuels (*e.g.*, ethanol) and blending components (*e.g.*, alkylate and reformate)—as separate covered products under its definition of ''gasoline.'' The Commission may nonetheless apply the revised proposed Rule to conduct implicating non-covered commodities if appropriate under the ''in connection with'' language in the revised proposed Rule, as discussed below in Section IV.D.2.a.2. This approach would provide the Commission with sufficient flexibility to achieve the statutory goal of protecting wholesale petroleum markets from manipulation without expanding the reach of a Section 811 rule to cover products not identified in the statute.

3. Section 317.2(c): ''Knowingly''

Section 317.2(c) of the revised proposed Rule defines ''knowingly'' to mean ''with actual or constructive knowledge such that the person knew or must have known that his or her conduct was fraudulent or deceptive.'' This definition has been added to provide guidance as to the level of scienter required to establish a violation of the general anti-fraud provision contained in revised proposed Rule Section 317.3(a). Consistent with the position the Commission adopted in the NPRM, the definition of ''knowingly'' derives from the extreme recklessness standard articulated by the Seventh Circuit and the District of Columbia Circuit Courts of Appeals in decisions delineating the appropriate scienter

[83] *See, e.g.*, NPRA at 15 (''The greater the emphasis on SEC authorities as a source of the Commission's Rule, the greater the likelihood that courts would follow the SEC model to imply a private right of action under EISA as well.''); Flint Hills at 4 (noting that the closer the Commission adheres to a SEC Rule 10b-5 model, the more difficult it will be to design a compliance program to preclude third-party litigation).

[84] *See, e.g.*, Sutherland at 7 (''[The Commission] should make clear that neither EISA nor the proposed Rule creates any private right of action.''); Plains at 1 (''We urge the Commission to make it clear that its proposed rule does not create any private right of action and that the rule may be enforced only by the Commission itself.''); API at 10 (''The Commission should make clear in any final Rule that it does not create a private right of action.'').

[85] *See* API at 10 (agreeing that ''Congress did not expressly provide for a private right of action in Section 811'').

[86] 73 FR at 48325-26.

[87] 73 FR at 48325.

[88] 73 FR at 48325.

[89] PMAA at 3 (''The definition[] of 'crude oil' . . . seem[s] appropriate.''); Navajo Nation at 7 (adopting the FTC's proposed definition of ''crude oil'' in its recommended rule text).

[90] The word ''exist'' in the definition has been replaced with the word ''exists''; the phrase ''the mixture'' has been changed to ''any mixture''; and in the first part of the definition, the phrase ''which remain'' has been changed to ''that remains.''

[91] 73 FR at 48325.

[92] PMAA at 3 (''The definition[] of . . . 'gasoline' . . . seem[s] appropriate.''); IPMA at 4 (agreeing with the Commission's proposed definition of ''gasoline''); Navajo Nation at 7 (adopting the FTC's proposed definition of ''gasoline'' in its recommended rule text).

[93] *See, e.g.*, ATA at 1 (encouraging the Commission to include renewable fuels markets in the proposed Rule's reach); PMAA at 3 (stating that the Commission should reach the manipulation of ethanol under the rule); *see also* IPMA at 4 (''[A]gree[ing] with the language that manipulation of non-petroleum based commodities such as ethanol and other oxygenates that directly or indirectly affect the price of gasoline should be subject to Commission enforcement under the proposed Rule.'').

[94] MFA at 12 (requesting that the Commission ''delete its reference to 'ethanol' as a subset of 'gasoline'''').

[95] *See* 73 FR at 48325.

standard under SEC Rule 10b-5.[96] The Commission discusses in further detail the intended application of the term ''knowingly'' in Section IV.D.2.b.1. below.

4. Section 317.2(d): ''Person''

Section 317.2(c) of the initially proposed Rule defined the term ''person'' to mean: ''any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.''[97] PMAA and Navajo Nation were the only commenters to address this definition, and both agreed that the definition is appropriate.[98] The Commission believes that this definition is consistent with the jurisdictional reach of the FTC Act,[99] as well as with prior usage in other FTC rules.[100] Therefore, the initially proposed definition of ''person'' is retained without modification and set forth in Section 317.2(d) of the revised proposed Rule.

5. Section 317.2(e): ''Petroleum distillates''

Section 317.2(d) of the initially proposed Rule defined ''petroleum distillates'' to mean ''(1) jet fuels, including, but not limited to, all commercial and military specification jet fuels, and (2) diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.''[101] The initially proposed Rule also defined ''petroleum distillates'' to include ''finished fuel products, other than 'gasoline,' produced at a refinery or blended in tank at a terminal.''[102] Two commenters supported the proposed definition of ''petroleum distillates,''[103] while another asked whether the definition of ''petroleum distillates'' included heavy fuel oils (*e.g.*, No. 5 and No. 6 fuel oils).[104] Another commenter argued that any final rule should reach biodiesel and other renewable fuels.[105]

The definition of ''petroleum distillates'' now in revised proposed Rule Section 317.2(e) remains unchanged from the initially proposed Rule. The Commission clarifies that the term ''petroleum distillates'' includes middle distillate refinery fuel streams, and thus encompasses all product streams above heavy fuel oils, up to and including lighter products such as on-road diesel, heating oil, and kerosene-based jet fuels. The definition, therefore, does not include heavy fuel oils.

As discussed in the definition of ''gasoline,'' the Commission tentatively has determined not to extend the definition of ''petroleum distillates'' to include renewable fuels, such as biodiesel. To do so would expand the reach of the revised proposed Rule beyond the products—''crude oil[,] gasoline or petroleum distillates''—expressly specified in Section 811 of EISA. The Commission further addresses the intended application of the revised proposed Rule to conduct implicating non-covered products, such as renewable fuels, in its discussion of the ''in connection with'' language in Section IV.D.2.a.2. below.

6. Section 317.2(f): ''Wholesale''

Section 317.2 (e) of the initially proposed Rule defined the term ''wholesale'' to mean ''purchases or sales at the terminal rack level or upstream of the terminal rack level. Transactions conducted at wholesale do not include retail gasoline sales to consumers.''[106] A few commenters generally agreed with the Commission's proposed definition,[107] and two commenters, MS AG and PMAA, expressly supported including sales at the terminal rack level.[108] PMAA asserted that manipulation at the rack level would directly affect ''the thousands of PMAA members whose trucks load at these terminal racks tens of thousand times each day.''[109]

Other commenters, however, opposed including transactions at or downstream of the terminal rack level, and they proposed revising the definition of ''wholesale'' to limit its meaning to purchases or sales of product in ''bulk'' quantities.[110] A few commenters argued that, although the term by definition included rack sales, public policy considerations supported limiting its scope. These commenters contended that ''rack pricing decisions are qualitatively different from those that arise in market-based bulk transactions,''[111] and that rack pricing practices were unlikely to affect overall price levels in markets served by a terminal or group of terminals.[112] They further argued that applying the Rule to rack transactions ''could jeopardize the ability of wholesale suppliers to respond to market conditions,'' and would also impose significant compliance burdens on the industry.[113]

The Commission finds the arguments advocating the exclusion of rack sales from the definition of ''wholesale'' to be unpersuasive, and at this time tentatively has determined not to limit the definition to bulk volume sales. As the Commission stated in the NPRM, and as some commenters conceded, terminal rack sales are ''wholesale'' transactions as that term is commonly defined.[114] Excluding rack sales from the definition would place the revised proposed Rule at odds with the express language of EISA, which directs the Commission to prohibit manipulative conduct in wholesale markets. Moreover, prohibited conduct may in fact occur at the terminal rack level in connection with wholesale petroleum transactions, to the detriment of consumers. Such a determination requires analysis on a case-by-case

[96] 73 FR at 48329 (citing *SEC v. Steadman*, 967 F.2d 6436, 641-42 (D.C. Cir. 1992)); *see also Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977), *cert. denied*, 434 U.S. 875 (1977).

[97] 73 FR at 48325.

[98] PMAA at 3 (''The definition[] of . . . 'person' . . . seem[s] appropriate.''); Navajo Nation at 8 (adopting the FTC's proposed definition of ''person'' in its recommended rule text).

[99] *See* 73 FR at 48325.

[100] *See, e.g.*, Telemarketing Sales Rule, 16 CFR 310.2(v); Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436.1(n).

[101] 73 FR at 48325.

[102] 73 FR at 48325.

[103] PMAA at 3 (''The definition[] of . . . 'petroleum distillates' . . . seem[s] appropriate.''); Navajo Nation at 8 (adopting the FTC's proposed definition of ''petroleum distillates'' in its recommended rule text).

[104] Sutherland at 7.

[105] ATA at 3.

[106] 73 FR at 48326.

[107] *See, e.g.*, Navajo Nation at 8 (adopting the FTC's proposed definition of ''wholesale'' in its recommended rule text); PMAA at 3 (''PMAA is in agreement with the Commission's definition of 'wholesale' . . . .'').

[108] MS AG at 3; PMAA at 3; *see also* IPMA at 4 (agreeing that '''wholesale' means purchases at the terminal rack or upstream of the terminal rack''); Platts (Kingston), Tr. at 154 (stating that ''[w]hen I hear wholesale, I tend to think of [it] as rack'').

[109] PMAA at 3.

[110] API and NPRA, for example, suggested that the Commission limit the term ''wholesale'' to ''bulk purchases or sales in contract quantities of 20,000 barrels or more, delivered or received via pipeline, marine transport or rail, at or near a location for which a price publication firm publishes a reference price.'' API at 30; NPRA at 30-31, *see also* SIGMA at 3 (suggesting that the Commission define ''wholesale'' to include only ''transactions involving quantities of product equal to or greater than the minimum pipeline tenders or barge volumes via which a terminal or terminal cluster receives supplies'').

[111] API at 29; NPRA at 30.

[112] SIGMA at 2 (contending that although ''[p]articular pricing practices at the rack level may have an impact on a particular supplier's customers,'' such practices would likely not ''alter overall price levels in the markets served out of a terminal or terminal cluster''); *see also* API at 30; NPRA at 30 n.46 (''Wholesale rack prices are limited to a relatively small geographic area.'').

[113] Additionally, API and NPRA argued that the Commission already has a price monitoring program for terminal rack pricing in place and it has not identified a ''problem at the wholesale rack level that would suggest a regulatory remedy is required.'' API at 29-30; NPRA at 30.

[114] 73 FR at 48326; *see* NPRA at 30; API at 29-30 (stating that its reasons for excluding practices at the terminal rack level and below ''from the scope of the Rule are not definitional, but rather based on public policy'').

basis. Furthermore, the inclusion in the revised proposed Rule of an explicit scienter requirement limiting the reach of the Rule to ''knowing'' or ''intentional'' conduct should assuage commenter concerns about reaching rack transactions. Thus, the revised proposed Rule covers terminal rack sales.

The Commission has, however, modified the proposed definition of ''wholesale'' in recognition of the differences that may exist in the patterns of distribution for crude oil, gasoline, and petroleum distillates.[115] As the Commission noted in the NPRM, the term ''wholesale'' may encompass one or both of the following concepts: (1) the sale of large quantities of product, and (2) the sale of a product for anticipated resale.[116] With regard to the sale of products listed in Section 811, the Commission recognizes that crude oil is sold in bulk quantities independent of terminal racks. Similarly, large quantities of jet fuel are often sold directly to airlines at airports independent of any terminal rack. Therefore, the Commission is revising the proposed definition of ''wholesale'' to address these differences, clarifying that all bulk sales of crude oil and jet fuel—even when not for resale—are encompassed by the revised proposed definition.

Specifically, Section 317.2(f) of the revised proposed Rule defines ''wholesale'' to mean ''(1) all purchases or sales of crude oil or jet fuel; and (2) all purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack level or upstream of the terminal rack level.'' As modified, this revised definition would not extend to retail sales of gasoline, diesel fuels, or fuel oils to consumers;[117] therefore, the language in the originally proposed definition excluding such sales is now redundant and has been deleted.[118]

7. Other Suggested Definitions

A few commenters suggested adding definitions to any final rule to clarify its scope and operation.[119] Specifically, several commenters proposed definitions for the terms ''manipulative or deceptive device or contrivance,'' a phrase included in the text of Section 811.[120] One commenter recommended that an FTC rule include a broad definition of the terms ''manipulative or deceptive device, scheme or contrivance'' that encompasses ''manipulative conduct that artificially distorts wholesale petroleum markets or undermines incentives to find and develop reserves of domestic crude oil.''[121] Borrowing language from the NPRM, another commenter urged the Commission to define a ''manipulative or deceptive act'' as an act that ''injects materially false or deceptive information into the marketplace.''[122] One commenter proposed that any rule, regardless of scope, should define ''manipulation [as] an act that is deceptive, that causes an effect on market prices, and [that] is intended by the actor to have such a result.''[123]

As described in greater detail in the discussion of Section 317.3 below, the Commission believes that the conduct prohibition in the revised proposed Rule would give meaning to the term ''manipulative or deceptive devices or contrivances'' found in Section 811, obviating the need for an additional definition in the Rule itself. Moreover, modifications to the proposed Rule's language clarify the type of conduct that the revised proposed Rule would prohibit, providing better guidance to market participants about its scope. Consistent with its position in the NPRM, the Commission intends to focus on fraudulent and deceptive conduct that injects false information into market transactions.[124] At this time, the Commission believes that it remains unnecessary to define either ''manipulative or deceptive device or contrivance'' or ''manipulative or deceptive act.''

D. Section 317.3: Prohibited Practices

1. Initial Proposed Rule

Section 317.3 of the initially proposed Rule contained three subparts (a) - (c), which respectively would have made it unlawful for any person:

(a) To use or employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.[125]

The NPRM discussed the scope and application of each subpart and articulated the elements of a cause of action under the proposed Rule. Commenters responded to the NPRM by discussing both the language of the proposed Rule and its proposed elements. Several industry commenters addressed the conduct provisions contained in proposed Section 317.3(a)-(c). Some commenters believed that the conduct provisions were generally appropriate,[126] and some expressed specific support for individual subparts. For example, PMAA advised that it would support the language used in proposed Section 317.3(a), as long as the proposed Rule also contained a scienter requirement.[127] ATAA also supported proposed Section 317.3(c), noting that ''[t]his flexible standard is exactly the sort of general prohibition of illegality that the FTC has successfully enforced over its almost 100 year history.''[128] In addition, some commenters agreed with

[115] One commenter stated that the Commission's proposed definition ''leaves uncertainty as to the status of retail transactions that involve large end users.'' Sutherland at 7.

[116] A common definition of ''wholesale'' is '''the sale of goods *in quantity*, as to retailers or jobbers, *for resale*.''' *See* 73 FR at 48326 (citing (*http://dictionary.reference.com/browse/wholesale*)) (emphasis added).

[117] *See* SIGMA at 1 (agreeing that any Section 811 rule should not apply to retail gasoline sales); NPRA at 29; API at 30.

[118] The definition of ''wholesale'' in the NPRM had stated that ''[t]ransactions conducted at wholesale do not include retail gasoline sales to consumers.'' 73 FR at 48326.

[119] *See generally* Van Susteren at 1 (noting that EISA provided neither a definition for ''market manipulation'' nor the specific elements that constitute a Section 811 violation).

[120] One commenter suggested using SEC Rule 10b-5 language to define this term. IPMA at 3-4 (contending ''that the [SEA] and SEC Rule 10b-5 definition of 'manipulative device or contrivance' as 'employ[ing] any device, scheme, or artifice to defraud' is appropriate in this case'').

[121] Navajo Nation at 3. Specifically, Navajo Nation recommended the following definition for ''manipulative device, scheme or contrivance'' be added: ''[C]onduct without substantial efficiency justification that is intended to artificially stimulate, depress or distort market prices or that foreseeably could artificially stimulate, depress, or distort market prices.'' *Id* at 8.

[122] NPRA at 28 (agreeing ''fundamental[ly]'' with the FTC's definition of ''manipulative or deceptive act'' in the NPRM). NPRA suggested that the FTC further define the type of information injected into the market, by specifying that the information must be about important aspects of supply or demand. *Id.* at 21.

[123] Muris at 2; *see also* ISDA at 10 (stating that CEA legal precedent has defined ''manipulative'' as '''an intentional exaction of a price determined by forces other than supply and demand'''' (quoting *Frey v. CFTC*, 931 F.2d 1171, 1175 (7th Cir. 1991)). *But see* NPRA (DeSanti), Tr. at 250-51 (arguing against the use of the CFTC's definition of ''market manipulation'').

[124] *See* Section IV.A. for a discussion of the Rule as an anti-fraud rule.

[125] 73 FR at 48326 (proposing language nearly identical to that employed in SEC Rule 10b-5); *see also* 17 CFR 240.10b-5.

[126] *See, e.g.*, CA AG at 2 (agreeing with the conduct provisions of the proposed Rule); MS AG at 2 (endorsing the Commission's proposed Rule); ATA at 2 (stating that the proposed Rule properly prohibits manipulation); *see also* SIGMA at 2 (''In particular, the Commission's decision to base its rule on Section 10b-5 of the [SEA] properly ensures consumer protection while affording business owners a wealth of certainty with respect to their market practices.'').

[127] PMAA at 3.

[128] ATAA at 12.

including general, rather than specific, conduct prohibitions in the proposed Rule.[129]

Most industry commenters, however, argued that a perceived lack of specificity about the conduct the proposed Rule would prohibit would lead to adverse consequences, such as a reduction in voluntary information disclosures by industry participants, and a reduction in the number of new participants entering the marketplace.[130] For example, NPRA opposed the use of the phrase ''device, scheme, or artifice to defraud'' in proposed Section 317.3(a),[131] arguing that the proposed Rule should ''identify more precisely the types of conduct that the FTC may target as market manipulation . . . to avoid the unintended chilling of procompetitive conduct.''[132] Commenters also expressed concerns about applying proposed Section 317.3(c) to wholesale petroleum markets.[133] One commenter argued that subpart (c) should only cover conduct that has an effect on the market, rather than on any individual person.[134]

With respect to subpart (b) of the initially proposed Rule, commenters have generally supported its prohibition of untrue statements of material fact.[135] Thus, in response to the ANPR, several commenters generally agreed that a rule should ban untrue statements because they interfere with well-functioning markets.[136] Similarly, in response to the NPRM, many commenters and workshop participants agreed that the proposed Rule should prohibit materially false statements, provided that such statements affected the marketplace.[137]

By contrast, although one commenter endorsed the proposed Section 317.3(b) prohibition of misleading statements through the omission of material facts,[138] nearly all the other commenters who addressed proposed Section 317.3(b) opposed it. Commenters argued that prohibiting such omissions would not make sense in petroleum markets, because participants in wholesale petroleum markets—unlike securities market participants—have no legal obligation to disclose certain information to counter parties.[139] They also argued that basing liability upon the failure to disclose material facts in wholesale petroleum markets would create confusion[140] and chill legitimate business conduct.[141] These commenters

[129] *See, e.g.*, Sutherland at 2 (''We welcome the Commission's decision not to propose specific conduct obligations or other affirmative duties that superimpose government norms for the rules of the marketplace.''); ATA at 2 n.3 (''We support the FTC's attempt to preserve flexibility by issuing general conduct prohibitions so as to allow for adaptation to changing market conditions and to avoid a 'laundry list of specifically proscribed conduct [that] could quickly become out of date.'" (quoting 73 FR at 48322-23)); ATAA at 11 (''[T]he proposed rule properly contains a broad anti-fraud provision.''); *see also* Platts at 9 (''Platts generally agrees with a non-prescriptive approach for entities' participation in price formation processes.''). Although they did not endorse a ''laundry list'' approach, a few other commenters sought to ensure that a rule would proscribe specific conduct as manipulative under a rule. *See* NPCA at 1; MPA at 2; IPMA at 3-4 (requesting that the Commission treat an oil company's decision to sell only gasoline pre-blended with ethanol at the terminal rack as a potentially manipulative practice).

[130] *See, e.g.*, API at 9-10, 26 (arguing that the proposed Rule was overly broad and would prompt market participants to adopt compliance programs that restrict voluntary disclosures); ISDA at 9 (arguing that market liquidity, particularly in times of greater market stress, would be adversely affected if ambiguous rule provisions artificially constrain ''critical market activities'' or dissuade potential market participants from entering the market); NPRA at 3 (''Market participants believe they will need to implement conservative compliance systems due to the uncertainty created by the Commission's proposal to apply SEC precedent to enforcement of the Rule . . . .''); Flint Hills at 3 (noting with approval the concerns raised by NPRA that the ''breadth of the proposed rule would create a significant amount of uncertainty as to what conduct may be captured by the Rule''); Plains at 3 (''Given . . . the uncertainties that will exist with respect to the [proposed Rule's] scope and applicability, the imposition of liability without any finding of an effect on the market or third parties will restrict legitimate market activity . . . .'').

[131] NPRA at 15-17 (arguing that the three elements of proof required for the proposed Rule, rather than the specific language of SEC Rule 10b-5, provide a better starting point for the development of an FTC rule).

[132] NPRA at 31. NPRA further recommended that the Commission add the language ''manipulative or deceptive'' to modify the phrase ''device, scheme, or artifice to defraud'' in proposed Section 317.3(a). *Id.* at 32.

[133] *See, e.g.*, ISDA at 8 (noting that ''[w]hile this clause may be reasonably clear in the securities context in which it has been applied, it is not clear to ISDA's members what this would require of commercial participants in physical, wholesale petroleum markets'').

[134] *See* MFA (Young), Tr. at 45 (arguing that the language ''any person'' in proposed Section 317.3(c) is overreaching); NPRA at 31.

[135] *See, e.g.*, Flint Hills at 3-4 (''[I]nstructing employees not to knowingly lie to their purchasers about supply conditions in order to drive up market prices draws a bright line that can be clearly communicated and audited without the need to limit legitimate conduct.'').

[136] Several ANPR commenters noted that reporting false information to private reporting services and to government agencies can be troublesome because market participants rely on information from private reporting services and government agencies to conduct business transactions. *See, e.g.*, API, ANPR, at 50 (stating that firms rely on private reporting services to understand industry trends and as a basis for contract pricing and that providing false or misleading information to these services ''could be problematic''); Plains, ANPR, at 4 (urging the Commission to prohibit the dissemination of false or misleading information made with the intent to defraud); PMAA, ANPR, at 7 (stating that because its members rely on private and government data reports, the Commission should publish a rule that ensures the accuracy of this data); Muris at 10 (''Deliberate false reports of transaction details to influence a price index should be a violation of a manipulation rule.'').

[137] *See, e.g.*, ISDA (Velie), Tr. at 41-42, 58 (agreeing that the Commission should focus on lies and other false statements if made with the specific intent to manipulate the market); MFA (Young), Tr. at 45 (agreeing that the dissemination of outright lies that cause an artificial market price should be prohibited); CFDR (Mills), Tr. at 48-49 (urging the Commission to only target false statements that act as a fraud on the marketplace rather than those made in bilateral negotiations between counterparties); API at 9 (suggesting that the Rule be limited to ''intentionally deceptive or fraudulent statements or acts designed to manipulate a wholesale petroleum market''); PMAA at 3; *see also* ATA at 2 (stating that the Commission should go after ''[d]eceptive or manipulative practices . . . used to disseminate false information or omit material information that causes market participants to perceive a change in the supply or demand''); ATAA at 2 (''The FTC's efforts in preventing market manipulation and the providing of false information are an important part of addressing the nation's and the airline industry's energy crisis.''); CFA (Cooper), Tr. at 56-57 (contending that the Commission should reach all false statements under the Rule, regardless of context, that have a potential to affect the market).

[138] *See* PMAA at 3 (approving of the use of established securities law precedent regarding false material facts and omissions of material fact).

[139] *See, e.g.*, NPRA at 7 (stating that, unlike securities markets, wholesale petroleum market participants do not have ''a duty to disclose to a counterparty the types of material, nonpublic information about [their] own compan[ies] with which Rule 10b-5 is concerned''); ISDA at 7 (noting that unlike securities markets, wholesale petroleum markets are not characterized by relationships that give rise to duties to disclose); API at 25 (''Permitting courts to base liability on failure to disclose facts . . . may make sense in the highly regulated securities industry, in which regulated parties often have access to material non-public information about the issuer that may affect the true value of the security, and therefore are governed by detailed disclosure obligations designed to protect unsophisticated investors.''); *see also* CFDR (Mills), Tr. at 129 (stating that in the securities arena, courts rely on the existence of fiduciary and other relationships to impose an affirmative duty on market participants to provide more information, and in the absence of such a relationship, participants do not have a duty to provide additional information).

[140] Commenters also asserted that to the extent disclosures are required for market participants to comply with an FTC rule, there may be conflicts with other laws. *See, e.g.*, NPRA at 10 (''It would be inconsistent with established antitrust law for a market manipulation rule to have the perverse effect of requiring competitors to disclose to each other a wide range of competitively sensitive information . . . .''); Flint Hills (Hallock), Tr. at 126 (stating that ''there can arise situations where . . . information exchanges [are] being encouraged [by the proposed Rule], whereas the antitrust laws would greatly discourage those sorts of information exchanges''); AOPL (Stuntz), Tr. at 176-77 (contending that if the Rule is applied to oil pipelines, the omissions requirement would conflict with the ICA).

[141] *See, e.g.*, API at 26 (''By reducing the amount of information in the marketplace, the omissions standard set forth in the NPRM could have a serious and harmful impact on the efficiency of petroleum markets.''); CAPP at 2 (stating that the omissions language is likely to have a chilling effect because it is ambiguous in its application); Flint Hills at 3-4 (agreeing that the omissions provision is ambiguous in its application and would present compliance difficulties); NPRA at 33 (suggesting

Continued

asserted that the proposed Rule therefore would discourage companies from disclosing information voluntarily—in order to avoid liability for material omissions—and, as a consequence, would reduce the flow of information in petroleum markets and interfere with market efficiency and functions.[142]

2. Revised Proposed Rule

Section 317.3 sets forth the conduct prohibited by the revised proposed Rule. Specifically, this provision states:

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) knowingly engage in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person; or

(b) intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product.[143]

The revised proposed Rule would broadly prohibit fraudulent or deceptive conduct, which may take various forms, including the intentional omission of material information. The modifications to the conduct provisions in the initially proposed Rule are intended to clarify the type of conduct that likely would violate the Rule. First, the Commission has consolidated the conduct prohibitions language in Section 317.3 of the initially proposed Rule to more clearly and precisely denote the unlawful conduct it prohibits. Second, to address the concern that the proposed Rule would chill legitimate conduct, the revised proposed Rule explicitly sets forth a scienter standard for each of the two conduct provisions.[144] Third, while the revised proposed Rule would also prohibit material omissions, the Commission has modified the prohibition to address specific concerns about the risk of deterring voluntary disclosures of information, by requiring a showing that the omission at issue distorts or tends to distort market conditions. With these modifications, the Commission believes the revised proposed Rule would serve the public interest by appropriately prohibiting manipulative conduct that injects false information into market transactions, without unnecessarily burdening legitimate business practices.

Specifically, Section 317.3(a) of the revised proposed Rule would prohibit any conduct that operates or would operate as a fraud or a deceit, provided that the alleged violator engaged in the prohibited conduct knowingly; that is—as defined in the revised proposed Rule—with extreme recklessness. Revised proposed Rule Section 317.3(b) separately would prohibit statements that are misleading because they both intentionally omit material facts and threaten the integrity of wholesale petroleum markets. In particular, Section 317.3(b) requires a showing that the alleged violator intends to mislead by ''intentionally'' omitting material facts from statements where they are needed in order to render such statements not misleading. The intent requirement and the proviso that the omission threaten the integrity of a petroleum market are intended to address many commenters' concerns that the omissions provision in initially proposed Rule Section 317.3(b) would have chilled legitimate business conduct by failing to focus more precisely on prohibiting fraudulent and deceptive conduct likely to harm wholesale petroleum markets.

The Commission does not intend the revised proposed Rule to prohibit inadvertent mistakes, unintended conduct, or legitimate conduct undertaken in the ordinary course of business.[145] The revised proposed Rule also would not impose any recordkeeping requirements.[146] In short, the revised proposed Rule would prohibit fraudulent or deceptive conduct in wholesale petroleum markets without unduly impeding beneficial market behavior.

The following section discusses the modifications in Section 317.3 and relevant comments. The RNPRM first discusses the meaning of the following phrases embedded in the preamble: ''directly or indirectly'' and ''in connection with.'' It then reviews the two conduct provisions, including in particular the scienter standard, prohibited conduct, and other concepts that are pertinent to each provision. The Commission seeks comments on the specific formulation of revised proposed Rule Section 317.3, and in particular on whether the Rule would effectively prohibit fraudulent and deceptive behavior in wholesale petroleum markets without unduly burdening legitimate business conduct.

a. Preamble Language

(1) ''Directly or Indirectly''

In the NPRM, the Commission stated that ''[m]anipulative or deceptive conduct involving non-petroleum based commodities that directly or indirectly affect[s] the price of gasoline . . . may be the subject of Commission enforcement under the proposed Rule.'' One commenter, MFA, questioned the

deletion of the omissions language because failing to do so ''would tend to chill procompetitive information disclosures due to a fear of liability for having made an incomplete or insufficiently caveated, not to mention simply mistaken, statement''); *see* also Muris at 12 (''[I]t is particularly important that the Commission identify with clarity omissions of information that would be actionable under the rule.'').

[142] *See, e.g.*, Brown-Hruska at 7 (stating that unlike securities markets, ''[a] prohibition that may result in the prosecution of omissions discourages the collection and profitable use of market information in decisions regarding supply, transactions, and pricing [in commodities and physical petroleum markets] and could harm market efficiency and impair market function''); Flint Hills at 4 (stating that if the Rule covers omissions it will be difficult to design a compliance program that does not restrict legitimate conduct); NPRA at 13-14 (explaining that if the Commission prohibits omissions under the Rule, companies will instruct their employees to reveal less information in order to avoid potential liability). Commenters were also concerned that entities would use the omissions provisions to bring vexatious litigation. *See, e.g.*, Flint Hills at 4 (stating that in-house counsels would advise their clients to ''reveal as little information as possible'' to avoid third-party challenges based on omissions and unintentional misstatements); NPRA at 10-11 (expressing concern that a '''full disclosure' rule would distort [a company's] decisions about whether to disclose information that may be incomplete'' due to its fear of counterparty litigation); Brown-Hruska at 8 (warning that an overbroad interpretation of the term ''misleading'' in Section 317.3(b) ''is likely to give rise to *ex post* opportunistic behavior on the part of counterparties who did not possess the allegedly omitted information and are unhappy with the deal they struck'') (emphasis in original); *see also* API at 24 (stating that the proposed Rule leaves ''open the possibility of liability arising from 'incomplete' disclosures'').

[143] This provision of the revised proposed Rule, therefore, sets forth conduct that would be manipulative or deceptive, pursuant to Section 811.

[144] As the Commission noted in the ANPR and the NPRM, ''nothing in connection with this Section 811 [r]ulemaking, any subsequently enacted rules, or related efforts should be construed to alter the standards associated with establishing a deceptive or an unfair practice in a case brought by the Commission.'' Specifically, intent need not be shown to establish that a particular act or practice is deceptive or unfair, and therefore violates Section 5 of the FTC Act. *See, e.g.*, *FTC v. Bay Area Business Council, Inc.*, 423 F.3d 627, 635 (7th Cir. 2005); *FTC v. Freecom Communications, Inc.*, 401 F.3d 1192, 1202 (10th Cir. 2005); *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 573-74 (7th Cir. 1989). 73 FR at 25619 n.55; 73 FR at 48322 n.61.

[145] Consistent with its position in the NPRM, the Commission currently does not expect to impose specific conduct or duty requirements, such as a duty to supply product, a duty to provide access to pipelines or terminals, a duty to disclose, or a duty to update or correct information. In particular, the revised proposed Rule would not require covered entities to disclose price, volume, and other data to individual market participants, or the market at large, beyond any obligation that may already exist. *See* 73 FR at 48326-27.

[146] *See* 73 FR at 48332.

correct interpretation of the phrase ''directly or indirectly,'' used in the preamble to Section 317.3 of the proposed Rule. MFA argued that Section 811 of EISA ''does not authorize the Commission to prohibit any misconduct that directly or indirectly affects wholesale gasoline prices.''[147] Rather, according to MFA, ''[t]he phrase 'directly or indirectly' modifies 'use or employ' in Section 811, nothing more or less.''[148]

The Commission intends that the phrase ''directly or indirectly''—which originates in Section 811 of EISA[149] and is also included in revised Section 317.3—delineates the level of involvement necessary to establish personal liability under the revised proposed Rule. In particular, it means that the revised proposed Rule will impose liability not only upon any person who directly engages in manipulation, but also against any person who does so indirectly. Thus, the Commission intends that the phrase ''directly or indirectly'' in the revised proposed Rule be interpreted and applied to prevent a person from engaging in the prohibited conduct, either alone or through others.

(2) ''In Connection With''

Section 811 authorizes the Commission to prohibit manipulative conduct undertaken ''in connection with'' the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale. In the NPRM, the Commission proposed to construe the phrase ''in connection with'' broadly, consistent with SEC legal precedent interpreting this language.[150] The Commission continues to believe that the Rule should reach market manipulation that occurs in the wholesale purchase or sale of products covered by Section 811 (and defined in the revised proposed Rule)—and ''in connection with'' such purchases or sales—provided that there is a sufficient nexus between the prohibited conduct and the markets for these products.[151]

The rulemaking record reflects commenter concerns about how the Commission might use the ''in connection with'' language to reach specific conduct or non-covered products. In particular, some commenters expressed concerns about whether the language might reach supply and operational decisions. API asserted that the SEC's broad interpretation of ''in connection with''—arising from the fact that the SEA was enacted ''to respond to the massive economic crisis of 1929 . . .''—was inappropriate for the petroleum industry.[152] Commenters also urged the Commission to limit any rule it publishes to statements or acts pertaining to ''specific wholesale petroleum transactions,'' and not to cover upstream statements or conduct, including supply or operational decisions.[153] Otherwise, these commenters argued, an FTC rule would result in the Commission regulating those activities,[154] thereby creating a substantial risk of disrupting pro-competitive activity in petroleum markets.[155]

The Commission disagrees with the notion that the ''in connection with'' language should never reach supply or operational decisions,[156] where there is a sufficient nexus between the conduct at issue and the purchase or sale of crude oil, gasoline, or petroleum distillates. The Commission emphasizes that this interpretation of the phrase ''in connection with'' would not require the Commission to regulate or otherwise second-guess market participants' legitimate supply and operational decision-making. The scienter standard clarifies in particular that the revised proposed Rule would not apply to conduct that appears in hindsight to have been simply an error or miscalculation, either because the actor did not knowingly engage in fraudulent or deceptive conduct, or because he or she did not intentionally mislead by omitting material facts from covered statements. Rather, the Commission would determine on a case-by-case basis whether to reach supply and operational decisions or any other type of conduct that is ''in connection with'' the markets for covered products.

In addition, commenters raised concerns regarding the Commission's interpretation of the phrase ''in connection with'' with respect to products that are not listed in Section 811. Several commenters supported the Commission proposal to reach purchases and sales of non-covered products, such as renewable fuels and blending components, under the Rule.[157] For example, one commenter argued that renewable fuels—such as ethanol and biodiesel—are growing in significance as a result of federal and state government mandates to reduce dependence on foreign oil.[158] Another commenter, however, opposed extending the Rule to include ethanol, as well as sugar, corn, and other commodities that are inputs into ethanol.[159] This commenter argued that the language of Section 811 does not specifically list non-petroleum based commodities, and that the Commission is not authorized to reach them.[160]

The Commission intends to reach products—such as renewable fuels (*e.g.*, ethanol or biodiesel) or blending components (*e.g.*, alkylate or

[147] MFA at 10.

[148] MFA at 11. MFA further argues that because ethanol is subject to futures trading and, thus, is ''a statutory 'commodity' under the CEA,'' ethanol is subject to the exclusive jurisdiction of the CFTC and should be exempt from any FTC market manipulation rule. *Id.* This argument is addressed above in Section IV.B.

[149] ''It is unlawful for any person, *directly or indirectly*, to use or employ . . . .'' 42 U.S.C. 17301 (emphasis added).

[150] In the NPRM, the Commission relied upon guidance from the Supreme Court decision in *Zandford* to conclude that the ''in connection with'' requirement is satisfied where fraudulent conduct coincides ''with a purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale.'' 73 FR at 48329 (citing *SEC v. Zandford*, 535 U.S. 813, 820 (2002)).

[151] *See Zandford*, 535 U.S. 813.

[152] API at 27-28 (citing *Zandford*, 535 U.S. at 819).

[153] API at 30-32; NPRA at 33 (stating that the Commission should not interpret the ''in connection with'' language as reaching upstream conduct and statements, including operational and supply decisions); *see also* CFDR (Mills), Tr. at 218-19 (asserting that supply decisions without misleading statements do not otherwise rise to the level of a fraud).

[154] API also recommended that the Commission, ''at a minimum, make clear in the final Rule that a firm's ability to provide an objective business justification for the challenged supply decision should provide an affirmative defense to liability under the Rule.'' API at 32.

[155] *See, e.g.*, NPRA at 33 (arguing that by reaching supply decisions under a rule, the Commission ''could seriously distort refiners' decision making and disrupt competitive activity in petroleum markets''); API (Long), Tr. at 214-15 (contending that the FTC's oversight of ordinary supply and operational decisions ''could have devastating effects on the market'').

[156] 73 FR at 48329; *Zandford*, 535 U.S. at 820.

[157] ATA at 3; IPMA at 4 (agreeing that manipulation of ethanol and other oxygenates should be covered where changes in ethanol prices directly or indirectly affect wholesale gasoline prices); MPA at 2; NPCA at 1; NPRA (Drevna), Tr. at 221-22 (contending that the Commission should ''absolutely'' consider blending components); SIGMA (Columbus), Tr. at 222-23 (agreeing that a rule should reach ''[a]nything that's mandated as a component'').

[158] ATA asserted that the Commission's effort to address manipulation of energy markets will be incomplete if the Commission failed to address manipulation in markets for alternative fuels. ATA at 3; *see also* IPMA at 1-2 (stating that increasingly, ethanol or other oxygenates have been added to gasoline because of environmental concerns or other reasons); SIGMA (Columbus), Tr. at 224 (''I assure you [that] ethanol is a mandated component in [gasoline] . . . .'').

[159] MFA at 11-12; MFA (Young), Tr. at 224 (arguing that Congress did not intend for corn and sugar—subcomponent parts—to be covered under the Rule).

[160] MFA contended that SEC precedent, upon which the Commission relies, has never used the ''in connection with'' requirement to reach collateral markets that may affect securities. Rather, MFA argues, the SEC has focused on securities markets. MFA at 10-11.

reformate)—that are not specifically identified in Section 811 only if there is a sufficient nexus between conduct involving those products and wholesale petroleum markets for covered products. Renewable fuels and blending components are integral to the overall supply of finished motor fuels; thus, manipulating purchases or sales of these products may have the requisite nexus with wholesale petroleum markets.[161] Under the revised proposed Rule, the Commission would determine on a case-by-case basis whether conduct in a market for a non-covered product is ''in connection with'' wholesale petroleum transactions.

After reviewing the existing rulemaking record, the Commission clarifies that it does not plan to apply its revised proposed Rule to commodities whose predominant use is in non-petroleum products, or to commodities that are inputs for ethanol, such as corn and sugar. The connection between these commodities and wholesale petroleum markets would likely be too attenuated to satisfy the ''in connection with'' requirement of Section 811.

b. Section 317.3(a): General Anti-Fraud Provision

Revised proposed Section 317.3(a) is a general anti-fraud provision, prohibiting any person from knowingly engaging in conduct, including the making of false statements of material fact, that operates or would operate as a fraud or deceit on any person. While the Rule initially proposed enumerated prohibited conduct in three separate subsections, revised proposed Section 317.3(a) now addresses prohibited conduct in a single provision that subsumes the remaining subsections, except for omissions of material facts, which are separately addressed by revised proposed Section 317.3(b).[162] Revised proposed Section 317.3(a) is substantially similar to Section 317.3(c)—and now also includes the prohibition on false statements previously contained in Section 317.3(b)—of the initial proposed Rule. In short, Section 317.3(a) prohibits market participants from lying in connection with wholesale petroleum transactions.

As revised, Section 317.3(a) would prohibit fraudulent or deceptive conduct that not only serves no legitimate purpose, but could also impair the efficient functioning of wholesale petroleum markets. Specific examples include (1) false public announcements of planned pricing or output decisions; (2) false statistical or data reporting; and (3) false statements in the context of bilateral or multilateral communications with any market participant or other person—who may serve as a conduit for the dissemination of the information, or who might act on the information—such as traders, suppliers, brokers, or agents; federal, state, or local governments; and government or private publishers.[163] Section 317.3(a) would also prohibit individual transactions or courses of business that constitute fraudulent or deceptive conduct, such as wash sales, that are intended to disguise the actual liquidity or price of a particular asset or market for that asset.[164]

(1) A Person Must ''Knowingly'' Engage in Conduct That Operates or Would Operate as a Fraud or Deceit

As noted above, the Commission has modified the text of the revised proposed Rule to articulate explicitly the scienter standards which respectively apply to revised proposed Rule Section 317.3(a) and Section 317.3(b).[165] In particular, the Commission has retained the scienter standard of extreme recklessness in the initially proposed Rule for revised proposed Rule Section 317.3(a). Section 317.3(a) of the revised proposed Rule now expressly provides that a person must engage in the proscribed conduct ''knowingly'' in order to violate subpart (a) of the Rule, and the term ''knowingly'' has been defined in the Rule to be coextensive with the extreme recklessness standard.[166] Thus, consistent with its position in the NPRM, the intent requirement in revised proposed Section 317.3(a) would be satisfied by showing that the defendant acted with extreme recklessness; that is, specifically, that the violator both acted with an extreme departure from standards of ordinary care in the petroleum industry and either knew or must have known that his or her conduct created a danger of misleading buyers or sellers.[167] The revised proposed Rule, including Section 317.3(a) of the Rule, would not extend to inadvertent conduct or mere mistakes.[168]

As a threshold matter, nearly every commenter who addressed the issue supported requiring some level of intent.[169] However, most commenters

[161] *See* NPRA (Drevna), Tr. at 225 (''[I]f you're going to let potentially 35 percent of the market out of the [regulation], what's the point?'').

[162] The Commission believes that, by treating omissions separately, market participants can more readily understand when alleged conduct violates revised proposed Rule Section 317.3(a).

[163] *See, e.g.*, *SEC v. Rana Research, Inc.*, 8 F.3d 1358 (9th Cir. 1993) (seeking permanent injunctive relief alleging that defendant's press release contained materially false and misleading statements); *SEC v. Softpoint, Inc.*, 958 F. Supp. 846 (S.D.N.Y. 1997) (finding defendant liable under SEC Rule 10b-5 when defendant disseminated false information to the market through press releases and SEC filings);*In the Matter of CMS Mktg. Serv. & Trading Co.*, Comm. Fut. L. Rep. (CCH) ¶ 29,634 (C.F.T.C. Nov. 25, 2003) (finding liability for the submission of false information to private reporting services); *see also CFTC v. Delay*, 2006 WL 3359076 (D. Neb. Nov. 17, 2006) (holding that the CFTC failed to prove that defendant knowingly delivered any false and misleading reports to the USDA on cattle sales under a charge of manipulation and attempted manipulation of the feeder cattle futures markets).

[164] *See, e.g.*, *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107 (2d Cir. 1998) (finding that the SEC's complaint sufficiently alleged that the defendant manipulated the market for a stock in violation of SEC Rule 10b-5 by engaging in wash sales and other deceptive conduct); *In the Matter of Michael Batterman*, 46 S.E.C. 304 (1976) (finding by consent that the defendant engaged in wash sales in violation of the securities laws); *Wilson v. CFTC*, 322 F.3d 555 (8th Cir. 2003) (affirming the CFTC's order finding that the defendant engaged in wash sales and imposing sanctions).

[165] This represents a change from the initially proposed Rule, which, like SEC Rule 10b-5, lacked any specific reference to scienter in the rule text. In the NPRM, the Commission proposed to require scienter as one of three required elements of proof. 73 FR at 48328. The other proposed required elements were: (1) a showing of a manipulative or deceptive act; and (2) a showing that the conduct was undertaken ''in connection with'' the purchase or sale of a covered commodity at wholesale. 73 FR at 48327-29.

[166] *See* Section IV.C.3. for a definition of the term ''knowingly.'' For purposes of the Rule, the Commission has chosen the term ''knowingly'' to denote extreme recklessness.

[167] Recognizing that ''the Courts of Appeals have adopted a number of different formulations as to precisely what constitutes reckless,'' the Commission proposed in the initial NPRM the recklessness standard articulated by the Seventh and District of Columbia Circuits. 73 FR at 48329 & n.131. *See Sundstrand Corp. v. Sun Chemical Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (defining reckless conduct as a '''highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it''' (citing *Franke v. Midwestern Oklahoma Development Authority*, CCH Fed. Sec. L. Rep. ¶ 95,786, at 90,850 (W.D. Okl. 1976)); *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (adopting *Sundstrand's* recklessness standard).

[168] As the Commission noted in the NPRM, FERC adopted a similar approach in its interpretation of its rule, noting that ''[t]he final rule is not intended to regulate negligent practices or corporate mismanagement, but rather to deter or punish fraud in wholesale energy markets.'' 73 FR 48328 n. 123 (quoting 71 FR at 4245-4246).

[169] *See, e.g.*, NPRA at 19-20 (suggesting that a specific intent requirement be incorporated into the text of any rule); CAPP at 1 (supporting a scienter requirement); API at 3 (''API supports the Commission's proposal to make scienter a requirement of any rule adopted under Section 811.''); CA AG at 2-3 (supporting a scienter requirement); CFDR at 3 (''Relevant legal authorities characterize market manipulation as a species of fraud that connotes fraudulent conduct specifically intended to corrupt the integrity of market pricing processes through rigged prices or fictitious trading . . . .''); Muris at 2 (observing that the statutory

opposed permitting a showing of recklessness to satisfy the scienter requirement.[170] They first contended that while recklessness may be an appropriate standard to employ in regulated securities markets—where many of the covered parties are in a fiduciary relationship with their clients—it is inappropriate in petroleum markets, where business relationships are generally unregulated and where parties generally owe no fiduciary duties to each other.[171] Second, commenters worried that courts grappling with cases brought under the proposed Rule might apply the lowest standard of recklessness because of the variety of meanings associated with the term in different legal contexts.[172] These commenters argued that requiring only a showing of recklessness—coupled with what they characterized as a vague NPRM prohibition of ''manipulation''—would permit the prohibition of some neutral or procompetitive conduct, and introduce uncertainty as to the conduct covered by a final rule.[173] Third, commenters argued that, if market participants were subject to liability under the proposed Rule for reckless conduct, they might choose to remain silent—in order to avoid liability for misstating or omitting a material fact—and thus reduce the volume of information available for price discovery in petroleum markets.[174]

Many of these commenters urged the Commission to adopt the higher scienter standard of specific intent, and to include this requirement in the language of any final rule.[175] In their view, a specific intent standard is necessary to protect petroleum market participants who act reasonably and in good faith. By contrast, CA AG supported the proposed recklessness standard, maintaining that requiring a showing of specific intent would preclude challenges to ''reckless conduct even if it had extremely detrimental effects.''[176]

The Commission continues to believe that an extreme recklessness standard is appropriate for the general anti-fraud provision in revised proposed Section 317.3(a). The scienter standard included in revised proposed Section 317.3(a) is consistent with analogous judicial interpretations of the statutory scienter requirement for SEC Rule 10b-5.[177] Recognizing that the Courts of Appeals have adopted several formulations as to precisely what constitutes recklessness, the Commission has defined the term ''knowingly'' to conform to the recklessness standard articulated by the Seventh and District of Columbia Circuits.[178] Thus, establishing

language and legislative history of EISA point to the SEC, the FERC, and the CFTC as relevant regulatory models, ''all of which require proof of scienter''); PMAA at 3-4 (supporting a scienter requirement). *But see* Navajo Nation at 5 n.5 (asserting that a scienter requirement makes the proposed Rule burdensome).

[170] *See, e.g.*, ISDA (Velie), Tr. At 12-13 (''[W]e would ask the Commission to reconsider its use of a recklessness standard.''); Flint Hills (Hallock), Tr. at 83 (''The recklessness standard is one that gives us great pause in terms of trying to create internal compliance policies.''); Sutherland at 5 (''Whatever the appropriateness of [the recklessness] standard in the SEC context . . . drawing inferences of misconduct based on imputed knowledge rather than actual intent is not a sound regulatory exercise when applied to the prevention of market manipulation in the commodity markets . . . .''); *see also* Pirrong Tr. at 114-15 (asserting that a recklessness standard could capture certain conduct that should not be captured, and that would not be captured by a specific intent standard); Brown-Hruska at 8 (''In order to encourage pro-competitive behavior, it is important that the standard for liability should be no less than specific intent . . . .'').

[171] *See, e.g.*, API at 4 (''Although a recklessness standard may be appropriate in the highly regulated securities context, with its fiduciary duties and strict disclosure requirements, it is not suited to wholesale petroleum markets.''); NPRA at 18-19 (explaining that ''[t]he application of a 'recklessness' standard may make sense in a securities context where parties owe each other fiduciary duties or are in other relationships of trust or confidence,'' but not in wholesale petroleum markets, in which clear standards of care do not exist between sophisticated market participants); Sutherland at 5 (stating that the recklessness standard may be appropriate for securities markets but not for commodity markets ''where buyers and sellers do not owe one another fiduciary duties''); Plains at 2-3 (explaining that the recklessness standard in the NPRM is inapplicable to wholesale petroleum markets where ''there is no presumption that one market participant owes any duties to its counterparties''); ISDA at 4 (''Because the prohibitions of SEC Rule 10b-5 are derived from statutory duties that do not exist in the wholesale commodities markets, many market participants cannot determine what behavior (other than false or misleading statements) may be prohibited . . . .'').

[172] *See, e.g.*, API at 3 (asserting that recklessness is a ''more malleable standard''); CFDR (Mills), Tr. at 92-95 (asserting that recklessness would create uncertainty as to how the law would be applied).

[173] *See, e.g.*, Plains at 3 (''[G]iven the distinctions between the securities markets and the crude oil markets, a recklessness standard will be ineffective in preventing or prosecuting actual fraud and will lead only to uncertainty and confusion as to the type of conduct that is prohibited.''); NPRA at 19 (''The application of a 'recklessness' standard in [the wholesale petroleum market] context would create confusion and concern about how to control and monitor the thousands of wholesale petroleum transactions that take place every day . . . .''); API at 16-17 (''Incorporation of a recklessness standard into the proposed Rule therefore would require market participants to guard against the possibility that the Commission (or courts) would base liability on conduct that falls far short of intentional wrongdoing.''); ISDA at 4 (stating that a recklessness standard would create uncertainty); *see also* Plains at 3 (explaining that the proposed Rule's lack of manipulative effect requirement, ''when coupled with a 'recklessness' standard . . . could render unlawful an unintentional act with no consequences''). *But see* SIGMA at 2 (''[T]he Commission's decision to base its rule on Section 10b-5 of the [SEA] properly ensures consumer protection while affording business owners a wealth of certainty with respect to their market practices.'').

[174] *See, e.g.*, API (Long), Tr. at 111 (asserting that a recklessness standard would discourage voluntary price reporting thus leading to ''information starved'' markets); Brown-Hruska at 8 (''A standard that allows liability for mere recklessness further discourages disclosure of information . . . .''); Flint Hills (Hallock), Tr. at 83-84 (asserting that a recklessness standard would result in entities limiting exchanges of information and reporting to governmental agencies); CFDR (Mills), Tr. at 93-95 (asserting that a recklessness standard would increase the likelihood for companies to withhold information needed for price discovery); *see also* Argus at 2 (''Absent a specific intent requirement, less transactional data will reach the index publisher, less data will enter the price formation process, and an increased chance of distortion in the indices produced may result.''). *See generally* Platts (urging the Commission not to discourage market activities that aid in price discovery).

[175] *See, e.g.*, API (Long), Tr. at 20 (supporting a specific intent standard); Argus at 2 (supporting a specific intent requirement); Brown-Hruska at 8 (''[I]t is important that the standard for liability should be no less than specific intent to manipulate market prices.''); CFDR at 6-7 (asserting that a specific intent standard would help to harmonize the legal standards employed by the FTC and CFTC, promoting ''fairness and reduc[ing] regulatory and legal uncertainty''); Flint Hills (Hallock), Tr. at 174 (advocating for specific intent as an element of the Rule); ISDA at 3-4 (encouraging the Commission to require proof of specific intent); Muris at 13 (urging the Commission to require ''evidence of specific intent to manipulate the price''); Sutherland at 4-5 (urging the Commission ''to require proof of specific intent''); NPRA at 17-18 (''[Specific intent] would give specific guidance to industry and provide FTC staff with objective evidence to which it can look to prove market manipulation. . . .'').

[176] CA AG at 2-3; *see also* CFA (Cooper), Tr. at 24-25 (arguing that the recklessness standard protects consumer); MS AG at 3 (supporting a recklessness standard); CAPP at 1 (asserting that by tying the scienter standard to SEC precedent, the Commission would afford market participants a measure of certainty); SIGMA at 2 (supporting the proposed Rule's scienter requirement); PMAA at 3 (supporting the proposed Rule's scienter requirement).

[177] Addressing the language of SEC Rule 10b-5, the Supreme Court held that an intent requirement is ''strongly suggest[ed]'' where statutory language prohibits a ''manipulative or deceptive'' ''device or contrivance.'' *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 197 (1976). The prohibitions language in Section 10(b) of the SEA is nearly identical to that in Section 811 of EISA. *See* 42 U.S.C. 17301; 17 C.F.R. 240.10b-5. As the Commission noted in the initial NPRM, most appellate courts that have considered the issue have concluded that extreme recklessness can satisfy *Ernst's* requirement of ''intentional or wilful'' conduct for the purposes of SEA 10(b) and Rule 10b-5. *See* 73 FR at 48328 & n.130 and the cases cited therein.

[178] The Court of Appeals for the Seventh Circuit has defined reckless conduct as a ''highly unreasonable [act or] omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it.'' *Sundstrand Corp. v. Sun Chemical Corp.*, 553 F. 2d 1033, 1045 (7th Cir. 1977), *cert. denied*, 434 U.S. 875 (1977) (quoting *Franke v. Midwestern Oklahoma Development Authority*, CCH Fed. Sec. L. Rep. ¶ 95,786 at 90,850 (W.D. Okl. 1976)). The Court of Appeals for the District of Columbia Circuit relied upon *Sundstrand Corp.* to establish the ''extreme recklessness'' scienter standard applicable to SEC Rule 10b-5. *See*

Continued

recklessness requires evidence from which it can reasonably be inferred that the violator both acted with an extreme departure from standards of ordinary care (using a reasonable market participant standard) and either knew or must have known that its conduct created a danger of misleading buyers or sellers. Although the Commission recognizes that wholesale petroleum markets are not characterized by the same degree of regulation as the securities markets, the Commission believes that the obligation on market participants not to engage in any fraudulent or deceptive act, practice, or course of business in an extremely reckless manner— regardless of other defined duties that may exist in other, more extensive regulated markets—is clear.

Articulating the required intent standard in the text of revised proposed Rule Section 317.3(a) should provide greater certainty to the business community as to the application of any final rule, making it less likely to inadvertently chill beneficial conduct. Moreover, the revised proposed Rule would not reach inadvertent conduct or mere mistakes. Thus, the Commission does not believe that prohibiting fraudulent or deceptive conduct is likely to reduce voluntary reporting and disclosures.[179] As there is no legitimate basis for engaging in conduct that would operate as a fraud or deceit upon any person, the Commission tentatively concludes that requiring a showing of ''knowing'' conduct is the appropriate scienter standard for revised proposed Rule Section 317.3(a).

(2) Materiality Standard

Section 317.3(a) of the revised proposed Rule prohibits conduct that operates or would operate as a fraud or deceit, specifically ''including the making of any untrue statement of material fact.'' The NPRM set forth a standard for materiality under the proposed Rule, providing that, ''[c]onsistent with securities law, a fact is material if there is a substantial likelihood that a reasonable market participant would consider it in making its decision to transact because the material fact significantly alters the total mix of information available.''[180] NPRA was the only commenter to address the concept of materiality specifically, and it recommended defining the term ''material fact'' to clarify that only facts that a reasonable market participant would consider *important* in making a decision to transact are material.[181] The Commission agrees and anticipates using a materiality standard that focuses on a fact that a reasonable market participant would consider important in making a decision to transact because such information significantly alters the total mix of information available.[182]

(3) Other Language in Section 317.3(a)

As discussed above, revised proposed Rule Section 317.3(a), like the proposed Rule, prohibits misrepresentations of fact because such misrepresentations are a clear example of fraudulent or deceptive conduct. The Commission has therefore added the phrase ''the making of any untrue statement of material fact'' in revised proposed Section 317.3(a) to make this prohibition clear.[183] Many commenters and workshop participants agreed that such conduct harms the marketplace and should be prohibited. Prohibiting misrepresentations of material fact is further supported by the enforcement approach of other agencies; thus, for example, the CFTC challenges and seeks to prohibit such misrepresentations in commodities markets.[184]

The Commission received comments on the meaning of the phrase ''would operate as a fraud or deceit.''[185] The Commission clarifies that the phrase ''would operate as a fraud'' means only that the revised proposed Rule prohibits conduct that would defraud or deceive another person, whether or not the impact of the prohibited conduct had yet been manifested.[186]

c. Section 317.3(b): Omission of Material Information Provision

Revised proposed Rule Section 317.3(b) addresses fraudulent or deceptive statements that are misleading as a result of the intentional omission of material facts, where that omission distorts or tends to distort market conditions for a covered product. Specifically, revised proposed Section 317.3(b) would make it unlawful for any person to ''intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product.'' Material omissions from a statement that is otherwise literally true may, under the circumstances present at the time the statement is made, render that statement misleading.[187] Thus, the Commission believes that prohibiting intentional omissions of material facts that distort or tend to distort market conditions is consistent with the intent of EISA and with the Commission's larger mandate to protect consumers and to preserve competition.[188]

SEC v. Steadman, 967 F.2d 636, 641-42 (D.C. Cir. 1992) (citing *Sundstrand Corp.*, 553 F.2d at 1045); 73 FR at 48329.

[179] Although the Commission never stated that the initially proposed Rule would reach such conduct, comments as well as discussion at the public workshop revealed significant confusion on this point.

[180] 73 FR at 48326.

[181] NPRA at 28-29 (citing *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976)). NPRA also recommends that the rule ''specify that the materially false or deceptive information must be about important aspects of supply or demand.'' NPRA at 20-21. This change, NPRA argues, would provide useful compliance guidance to industry, without being ''overly restrictive, because many types of information may involve important aspects of supply or demand.'' NPRA at 21.

[182] *See Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (''[A]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote.'') (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

[183] The NPRM noted that this provision of the proposed Rule would provide a clear ban on ''the reporting of false or misleading information to government agencies, to third-party reporting services, and to the public through corporate announcements.'' 73 FR at 48326. Congress gave the Commission authority under Section 812, a separate provision from Section 811, to prohibit any person from reporting information related to the wholesale price of petroleum products only if it is required by law to be reported to a federal department or agency. The prohibitions embodied in Section 812 became effective with the enactment of EISA on December 19, 2007. *See* 42 U.S.C. 17302.

[184] *See, e.g., In the Matter of CMS Mktg. Serv. & Trading Co.*, Comm. Fut. L. Rep. (CCH) ¶ 29,634 (C.F.T.C. Nov. 25, 2003) (finding liability for the submission of false information to private reporting services); *see also CFTC v. Delay*, 2006 WL 3359076 (D. Neb. Nov. 17, 2006) (holding that the CFTC failed to prove that defendant knowingly delivered any false and misleading reports to the USDA on cattle sales under a charge of manipulation and attempted manipulation of the feeder cattle futures markets); *SEC v. Rana Research, Inc.*, 8 F.3d 1358 (9th Cir. 1993) (seeking permanent injunctive relief alleging that defendant's press release contained materially false and misleading statements); *SEC v. Softpoint, Inc.*, 958 F. Supp. 846 (S.D.N.Y. 1997) (finding defendant liable under SEC Rule 10b-5 when defendant disseminated false information to the market through press releases and SEC filings).

[185] In the NPRM, the Commission also sought to clarify that the language ''operates as a fraud'' did not negate the requirement, present in securities law precedent, that a showing of scienter was necessary to prove a violation of this subsection. 73 FR at 48327.

[186] 73 FR at 48327.

[187] *See McMahan & Co. v. Wherehouse Ent., Inc.*, 900 F.2d 576, 579 (2d Cir. 1990) (''Some statements, although literally accurate, can become, through their context and manner of presentation, devices which mislead investors.'').

[188] In addition, any omission that is part of a fraudulent or deceptive act, practice, or course of business would violate revised proposed Section 317.3(a). *See, e.g., In the Matter of A.J. White & Co.*, File No. 8-11962, 1975 SEC LEXIS 2564, at *61-63 (Jan. 21, 1975) (finding defendants liable under SEC Rule 10b-5 for, *inter alia*, engaging in a course of conduct that operated as a fraud on purchasers of a stock offering by means of untrue statements and material omissions). This is consistent with the more general principle that any otherwise lawful act, if part of an unlawful course of business, nevertheless may be actionable. *See Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S.

The Commission has modified this component of Section 317.3(b) of the initially proposed Rule to address concerns raised by commenters about that section's breadth of coverage, and its potential to chill pro-competitive or pro-consumer behavior.[189] Many commenters argued that while the omissions prohibition language of SEC Rule 10b-5 may be appropriate in securities markets, it is not appropriate in wholesale petroleum markets, owing to fundamental differences between the markets.[190] Cognizant of these concerns, revised proposed Rule Section 317.3(b) now includes an express scienter requirement that limits its reach to intentional conduct. The provision also now requires a showing that the omission at issue ''distorts or tends to distort market conditions for any [covered] product.'' Thus, Section 317.3(b) would prohibit intentionally omitted information that would mislead other market participants, public officials, or the market at large, such as material omissions made in statements to officials during a national emergency.

Revised proposed Rule Section 317.3(b) would not, however, impose an affirmative duty to disclose information. Rather, the provision would apply if ''a covered entity voluntarily provides information—or is compelled to provide information by statute, order, or regulation—but then fails to disclose a material fact, thereby making the information provided misleading.''[191] This is consistent with legal precedent establishing that once an entity has decided to speak, it must do so truthfully and accurately, and it may have to provide additional information to ensure that previously provided information is truthful.[192] Some commenters argued that the Commission should clarify that a rule will not require them to release commercially sensitive information, such as information regarding supply availability.[193] For example, Muris urged the Commission not to reach ''pure omissions'' under the Rule, which ''arise when a seller is silent 'in circumstances that do not give any particular meaning to his silence.'''[194] The Commission does not intend, under the revised proposed Rule, either to prohibit dealings undertaken in the ordinary course of business that are not intended to defraud or to deceive, or to impose disclosure obligations on market participants unless the omission of material fact is made with the intent to deceive and those omissions are of the type that distort or tend to distort market conditions.

The Commission seeks additional comment and information on this issue, including responses to specific questions set forth in Section IV.I. of this Notice, to enable it to determine whether the alterations to the omissions provision are sufficiently tailored to prohibit conduct that threatens the integrity of wholesale petroleum markets without imposing unnecessarily high compliance costs on industry participants.

(1) Scienter Standard: A Person Must ''Intentionally'' Mislead By Omitting Material Information

Sections 317.3(b) of the revised proposed Rule expressly provides that a person must engage in the proscribed conduct ''intentionally'' in order to violate the Rule. The Commission tentatively has modified the scienter standard for the omissions provision in this manner to address commenter concerns that, in the absence of industry regulatory obligations, an FTC rule might reduce voluntary reporting and disclosures, and to clarify that this provision would not reach inadvertent conduct or mere mistakes.[195] To that end, establishing a violation of revised proposed Rule Section 317.3(b) would require establishing that the actor in question intended to mislead by making a statement that omitted material facts. This approach represents a different scienter standard than the showing of extreme recklessness required to establish a violation of revised proposed Rule Section 317.3(a). This standard is also different than the specific intent standard proposed by some commenters. In particular, this approach should not be read to require a showing that the person intended to influence market conditions. Rather, proving a violation of revised proposed Rule Section 317.3(b) would require proof that the alleged violator intended to mislead—regardless of whether he or she specifically intended to affect market prices (*e.g.*, specific intent)—and regardless of whether the conduct was likely to succeed in defrauding or deceiving the target.[196] Conversely, conduct that is the product of reckless or negligent behavior would not violate revised proposed Rule Section 317.3(b).

This formulation of the scienter requirement should eliminate concern about which of the various judicial interpretations of the ''recklessness'' standard under securities law would have applied to the omissions provision in the proposed Rule. The Commission recognizes commenter concerns that the initially proposed omissions provision would have imposed on wholesale market participants the obligation to know whether a person would likely be defrauded or deceived by the conduct at issue, which could be difficult. At the same time, using the word ''intentionally'' in combination with the specific conduct prohibition language in revised proposed Rule Section 317.3(b) simplifies the evidentiary burden required to prove a violation, thereby reducing the potential for judicial confusion and clarifying the compliance standard for market participants. The Commission may consider and rely upon both direct and circumstantial evidence of the intent to mislead by a material omission to establish that an alleged violator possessed the requisite level of intent.

600, 606 (2003) (upholding a fraud claim when the facts presented a lawful ''nondisclosure [of information] accompanied by intentionally misleading statements designed to deceive the listener'').

[189] Section 317.3(b) of the initially proposed Rule would have made it unlawful for any person to ''omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.''

[190] *See, e.g.*, API at 25 (stating that unlike wholesale petroleum markets, securities markets are ''are governed by detailed disclosure obligations designed to protect unsophisticated investors''); Muris at 2 (urging the FTC to ''avoid importing broad disclosure requirements from highly regulated markets that simply have no place in wholesale petroleum markets''); NPRA at 4 (arguing that the full disclosure rationale underlying SEC Rule 10b-5 does not fit wholesale petroleum markets); Plains at 3 (stating that in the crude oil markets, unlike securities markets, ''there is no presumption that one market participant owes any duties to its counterparties that would require disclosure of any information'').

[191] 73 FR at 48327.

[192] *See City of Monroe Employees Retirement System v. Bridgestone Corp.*, 399 F.3d 651, 670 (6th Cir. 2005) (stating that companies are generally under no obligations to disclose their expectations for the future to the public; however if a company chooses to volunteer such information, '''courts may conclude that the company was obliged to disclose additional material facts . . . to the extent that the volunteered disclosure was misleading''') (quoting *Helwig v. Vencor, Inc.*, 251 F.3d 540, 564 (6th Cir. 2001) (en banc)); *see also Plotkin v. IP AXESS Inc.*, 407 F.3d 690 (5th Cir. 2005) (finding that material omissions from a company's press release rendered that press release misleading regardless of the existence of a fiduciary or other legal relationship).

[193] *See, e.g.*, API (Long), Tr. at 180; NPRA at 11-12.

[194] Muris at 12 (quoting *In re Int'l Harvester*, 104 F.T.C. 949, 1059 (1984)).

[195] Although the Commission never stated that the initially proposed Rule would reach such conduct, comments as well as discussion at the public workshop revealed significant confusion on this point.

[196] However, Section 317.3(b) separately requires that an intentional, material omission be of the kind that distorts or tends to distort market conditions for any such product. *See* Section IV.D.2.c.2. below.

(2) The Omission of Material Information Must Distort or Tend to Distort Market Conditions For a Covered Product

The Commission has added limiting language to the omissions provision in revised proposed Rule Section 317.3(b), so that a statement made misleading by reason of the intentional omission of a material fact violates the provision only if it ''distorts or tends to distort market conditions'' for any covered product.[197] The Commission recognizes that identifying statements that are unambiguously misleading by dint of a material omission may be difficult in wholesale petroleum markets and create uncertainty within the business community about the Rule's application. Thus, an unbounded omissions provision could have an unintended chilling effect on normal business activity, and it could unnecessarily raise the costs of carrying out normal business activity in order to avoid potential litigation risks. Thus, in addition to modifying the scienter standard to require a showing of intentional conduct, the Commission believes that Section 317.3(b) should focus on misleading statements that are of sufficient import or scope to distort or tend to distort the market conditions that guide market participants' decision-making.[198] This will enable the Commission to direct its enforcement efforts against those instances of misconduct that are most likely to injure the integrity of market prices.

This approach comports with the weight of commenter responses to the initially proposed omissions provision. In this regard, many commenters recommended that the Commission ''require that market manipulation actually impact the market.''[199] These commenters argued that if the rule did not focus on conduct harmful to the market—as manifested by a price or other market effect—it would potentially chill legitimate business conduct.[200] In particular, they claimed that the rule would reach conduct arising from routine commercial transactions such as bilateral contract negotiations unlikely to harm the market.[201] One commenter suggested that an effect on market prices would be relevant in determining whether a rule violation occurred.[202]

In the initial NPRM, the Commission rejected requiring a demonstration of market or price effects in order to prove a rule violation, and some commenters supported that approach.[203] CA AG, for example, agreed with the Commission's conclusion that there is no economic justification for fraudulent or deceptive conduct, and that harm to wholesale petroleum markets can properly be inferred from such conduct without more.[204] Furthermore, MS AG and CA AG agreed that a price effects requirement would make it difficult to prove a rule violation even where effects had occurred, potentially encumbering law enforcement efforts.[205] These commenters therefore supported the Commission's initial decision not to include a price effects requirement.

The Commission continues to believe that a showing of price effects should not be required to establish a rule violation[206] because there is no economic justification for fraudulent or deceptive conduct in any market.[207] Requiring a showing of price effects—and imposing the concomitant additional evidentiary burden upon the Commission—would introduce an unnecessary risk that conduct detrimental to the integrity of the market would escape successful challenge.[208]

Requiring a showing that a particular omission ''distorts or tends to distort market conditions'' to establish a violation of Section 317.3(b) should not be read as requiring that the FTC show that the market has actually been distorted.[209] This language is rather

[197] This proviso is similar to the anti-manipulation provision of the CEA, which prohibits the communication of ''false or misleading or knowingly inaccurate reports concerning . . . market information or conditions that *affect or tend to affect the price of any commodity in interstate commerce* . . . .'' 7 U.S.C. 13(a)(2) (emphasis added). The Commission does not intend, however, to adopt the elements of proof that are required for a finding of liability under the CEA under the revised proposed Rule.

[198] Markets continually absorb new information and adjust price signals to that new information. Intentionally injecting false information into that process leads to distorted signals.

[199] Sutherland at 6; *see also* API at 34 (recommending that the Commission require ''proof that a party's deceptive or fraudulent conduct caused market conditions to deviate materially from the conditions that would have existed but for that conduct''); Plains at 3.

[200] Many commenters disagreed with the Commission's proposal in the initial NPRM not to require a showing of price effects to establish a rule violation. *See, e.g.*, Van Susteren at 2 (''The lack of a requirement of a showing of price effects to establish culpability leaves the rule overbroad and risks inconsistent or unwarranted enforcement efforts by the Commission.''); ISDA at 3-4 (asking that the Commission require proof of price effects); Pirrong Tr. at 205 (''I think it would be beneficial to market participants to have [a price effects] standard in [a rule].''); *see also* Plains at 3 (urging the Commission to make clear that only conduct that has a ''manipulative effect on the relevant market'' will be actionable). Other commenters were concerned that if the Rule failed to focus on conduct harmful to the market, it would have a chilling effect on businesses. *See, e.g.*, API at 33 (''Applying Section 811 to conduct that does not cause a material deviation in market prices . . . would likely harm consumer welfare . . . by chilling competitive market behavior . . . .''); ISDA at 3-4 (arguing for a price effects requirement by explaining that ''a Rule that is overbroad, imprecise, or both likely will chill legitimate commercial behavior'').

[201] *See, e.g.*, API at 33 (''Unless the FTC requires an appropriate connection between challenged conduct and a material deviation in *market* prices, it runs the risk of having to police every routine commercial dispute as a potential violation of Section 811.''); ISDA at 13 (''[A]s a sound policy matter, conduct that actually harms markets is the only conduct with which the Commission should be concerned and to which it should devote its limited public resources.''); *see also* API (Long), Tr. at 220 (suggesting the Commission consider a safe harbor for statements or omissions not made in connection with corporate announcements, or reports to government agencies or private reporting services); *cf.* NPRA at 22 (stating that the Commission's Rule ''should concentrate on whether the defendant intended to 'defraud' the market, not just one other individual'').

[202] For example, CFDR explained that, in instances where the Commission is investigating multiple players, a movement in market prices as a result of conduct by one of the alleged wrongdoers can be probative in determining whether that player possessed the requisite intent or ''whether other market participants were in fact deceived by the alleged misconduct.'' CFDR at 7. Accordingly, CFDR asked that the Commission determine the ''relevance and importance'' of a price effect requirement on a case-by-case basis. *Id.*

[203] IPMA at 4; ATAA at 12; MS AG at 3; CA AG at 3; *see also* USDOJ, ANPR, at 1 (''Certainly, there should be no requirement that one succeed in moving prices . . . the only requirement should be an attempt to do so . . . whether successful or not.'').

[204] CA AG at 3; *see* 73 FR at 48329-30.

[205] CA AG at 3; MS AG at 3 (arguing that price effects could be ''extremely difficult to prove'' therefore chilling enforcement of ''obvious violations''). Specifically, CA AG noted that prior California gas pricing investigations demonstrated that it is nearly impossible to link a particular act to a corresponding direct effect on price because too many variables affect price. CA AG at 3.

[206] This approach is also consistent with that taken by the FERC in their market manipulation rulemaking proceedings. *See* 71 FR at 4244. Manipulative conduct can harm the marketplace even without a prolonged price effect by impeding the efficiency of the market equilibration process and potentially introducing distrust as to the integrity of the process. *See* 73 FR at 48329 (noting that ''[f]raudulent behavior interferes with market signals, reduces transparency in the market, and casts into doubt the very information that allows markets to function properly'').

[207] The Commission believes that reading a price effect requirement into EISA is not only unsupported by the text of the Act, but also inconsistent with its aim to curb fraudulent or deceptive conduct in wholesale petroleum markets. *See* 42 U.S.C 17301; *see also* 73 FR at 48329 n.138 (noting that ''[t]he enabling statute is clear: 'It is unlawful . . . to use or employ . . . any manipulative or deceptive device or contrivance'''').

[208] Overcoming the practical problems associated with identifying and proving a specific price effect from fraudulent or deceptive conduct in wholesale petroleum markets may not be possible in many, if not most, cases. *See* 73 FR at 48329-30 (''The Commission's experience in investigating petroleum pricing anomalies demonstrates the difficulty of identifying price changes that result directly from any specific act or conduct.'').

[209] In response to CFDR's argument that the presence or absence of market effects can inform the question of whether a violation occurred, the Commission notes that nothing in the RNPRM or the revised proposed Rule prevents it from

intended only to help strike an appropriate balance between achieving enforcement goals and avoiding unintended chilling effects on normal business activity. The provision therefore focuses only on those statements made misleading by reason of the omission of a material fact that threaten the integrity of wholesale petroleum markets—and thus carry the greatest risk of injury to those markets—without unduly encumbering enforcement.[210] The tendency to distort market conditions for wholesale petroleum products may be properly inferred from the conduct itself, without separate and additional proof of a tendency to distort market conditions. For example, proof that an actor intentionally reported price information to a private data reporting company that is in the business of providing price reports to the marketplace—and that the actor intentionally omitted material facts which the reporting company required to be reported—would satisfy the market conditions proviso.[211] The Commission believes that the limiting proviso will also help avoid unwarranted regulatory burdens on industry by clarifying the scope of Section 317.3(b).[212]

This proviso also should not be read as requiring the Commission to demonstrate a direct relationship between the conduct and an effect on price, as suggested by many commenters,[213] or a quantifiable effect on prices or market conditions. Moreover, it is not the Commission's intent that the proviso require a demonstration of the presence of market power or a reduction in competition—within a relevant antitrust product and geographic market—as these concepts are defined by antitrust legal precedent.

The Commission specifically seeks additional comment and information on this issue, including responses to specific questions set forth in Section IV.I. of this Notice. If, after reviewing additional comments on the RNPRM, the Commission should find that its tentative decision to include a market conditions proviso—or its tentative decision not to include a required showing of price effects—impedes optimal enforcement efforts, the Commission will revisit the issue.

(3) Materiality

Revised proposed Rule Section 317.3(b) prohibits the omission of a ''material fact.'' The standard for materiality is addressed above in Section IV.D.2.b.2., and that standard also applies to subpart (b). Thus, for purposes of the omissions provision, a fact is material if there is a substantial likelihood that a reasonable market participant would consider it important in making a decision to transact, because the material fact significantly alters the total mix of information available.[214]

E. Section 317.4: Preemption

Section 815(c) of EISA states that ''[n]othing in this subtitle preempts any State law.''[215] Consequently, Section 317.4 of the revised proposed Rule contains a standard preemption provision used in other FTC rules, making clear that the Commission does not intend to preempt the laws of any state or local government, except to the extent of any conflict.[216] This is consistent with the position stated in the NPRM, where the Commission explained that there is no conflict, and therefore no preemption, if ''state or local law affords equal or greater protection from the manipulative conduct prohibited by the proposed Rule.''[217]

Few commenters addressed preemption of state law. One commenter, MS AG, agreed that EISA does not preempt state law and urged the Commission not to do so.[218] Two commenters agreed that the language of the proposed Rule does not appear to preempt state law.[219] Accordingly, the revised proposed Rule includes the preemption provision proposed in the NPRM.[220]

F. Section 317.5: Severability

Section 317.5 of the revised proposed Rule contains a standard severability provision. This provision makes clear that if any part of the Rule is held invalid by a court, the rest of the Rule will remain in effect.[221] The Commission received no comments on this issue. Accordingly, the Commission retains without change the severability provision proposed in the NPRM.[222]

G. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA'')[223] requires a description and analysis of proposed and final rules that will have significant economic impact on a substantial number of small entities. The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'')[224] with the proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA'')[225] with the final Rule, if any. The Commission is not required to make such analyses if a rule

considering market effects if the evidence on this issue is clear enough to be useful. *See* CFDR at 7.

[210] Conduct that distorts or tends to distort market conditions would be any conduct that arises from the intentional distortion of the market information upon which the price discovery process in wholesale petroleum markets depend.

[211] In this regard, the revised proposed Rule would be consistent with CEA precedent that, in determining whether a false report would affect or tend to affect the price of a commodity, courts and the CFTC have generally assumed that a false report of price or volume information to a source widely used by market participants would affect or tend to affect market conditions. *See CFTC v. Bradley*, 408 F. Supp. 2d 1214 (N.D. Okla. 2005) (denying defendant's motion to dismiss when complaint alleged defendants reported fictitious trades to private reporting services); *In the Matter of Dynegy Mktg. & Trade*, Comm. Fut. L. Rep. (CCH) ¶ 29,262 (C.F.T.C. Dec. 18, 2002) (finding liability for false reporting of trading price and volume information to private reporting services); *In the Matter of CMS Mktg. Serv. & Trading Co.*, Comm. Fut. L. Rep. (CCH) ¶ 29,634 (C.F.T.C. Nov. 25, 2003) (finding liability for false information submitted to private reporting services). Further, the Commission believes that proof that an actor falsely reported the operational status of a refinery, terminal, or pipeline, and did so through the intentional omission of material information, such conduct would also allow an inference that the conduct tended to distort market conditions.

[212] As an example of this approach, if an actor intentionally omits information material to the marketplace, establishing a Rule violation would require showing only that the stated information (*i.e.*, the misleading statement) pertains to any process by which prices are discovered and adjusted. Markets continually absorb new information and adjust price signals to reflect that new information. A variety of information can affect the process including, *e.g.*, information about operational activity of refineries, transportation disruptions, product inventory levels, and product prices.

[213] *See, e.g.*, Van Susteren at 2; ISDA at 13; Sutherland at 6; API at 32.

[214] This standard conforms to the approach the Commission followed in the NPRM with respect to materiality; that is, ''[c]onsistent with securities law, a fact is material if there is a substantial likelihood that a reasonable market participant would consider it in making its decision to transact because the material fact significantly alters the total mix of information available.'' 73 FR at 48326.

[215] 42 U.S.C. 17305.

[216] *See, e.g.*, Disclosure Requirements and Prohibitions Concerning Franchising, 16 CFR 436.10(b).

[217] 73 FR at 48330.

[218] MS AG at 3 (''[MS AG] agrees that the EISA does not preempt state law and the proposed Rule should not.'').

[219] Sutherland at 7 (''The proposed Rule includes language indicating the Commission's view that the new regulatory regime does not preempt state law.''); SIGMA at 3 (''The Commission has chosen not to include any language in the NPRM that would preempt applicable state law in the area of market manipulation.''); *see also* SIGMA at 3 (''SIGMA recommends that the Commission adopt hortatory language in its preamble to the NPRM that urges state attorneys general and other law enforcement officials to use its final rule as a guide to 'market manipulation' cases.''); SIGMA (Columbus), Tr. at 186 (asserting that state attorneys general may chose to enforce Section 811 of EISA).

[220] *See* 73 FR 48330, 48334.

[221] Examples of FTC rules containing similar severability provisions: Telemarketing Sales Rule, 16 CFR 310.9; Used Motor Vehicle Trade Regulation Rule, 16 CFR 455.7.

[222] 73 FR at 48330, 48334.

[223] 5 U.S.C. 601-612.

[224] 5 U.S.C. 603.

[225] 5 U.S.C. 604.

would not have such an economic effect.[226]

Although the scope of the Rule may reach a substantial number of small entities as defined in the RFA, the Commission believes that the revised proposed Rule would not have a significant economic impact on those businesses.[227] In the initial NPRM, the Commission specifically requested comments on the economic impact of the initial proposed Rule and received none.[228] Given that the revised proposed Rule does not impose any reporting or disclosure requirements, document or data retention requirements, or any other specific conduct requirements, it is unlikely that the revised proposed Rule will impose costs to comply beyond the standard costs associated with ensuring that acts, practices, and courses of conduct are not fraudulent or deceptive. Therefore, the Commission believes that the revised proposed Rule, if finalized, would not have a significant economic impact on a substantial number of small entities. Notwithstanding this belief, the Commission provides a full IRFA analysis to aid in its solicitation for additional comments on this topic.

1. Description of the reasons that action by the agency is being considered

Section 811 grants the Commission the authority to publish a rule that is ''necessary or appropriate in the public interest or for the protection of United States citizens.''[229] As discussed above, the Commission believes that promulgating the revised proposed Rule is appropriate to prevent fraudulent or deceptive conduct in connection with wholesale petroleum markets for commodities listed in Section 811, and the Commission has tailored the revised proposed Rule specifically to reach such conduct.

2. Succinct statement of the objectives of, and the legal basis for, the revised proposed Rule

The legal basis of the revised proposed Rule is Section 811 of EISA, which prohibits fraudulent or deceptive conduct in the wholesale purchase or sale of petroleum products in contravention of rules, if any, that the Commission may publish. The revised proposed Rule is intended to define the conduct that the law proscribes.

3. Description of and, where feasible, an estimate of the number of small entities to which the revised proposed Rule will apply

The revised proposed Rule applies to persons, including business entities, engaging in the wholesale purchase or sale of crude oil, gasoline, and petroleum distillates. These potentially include petroleum refiners, blenders, wholesalers, and dealers (including terminal operators that sell covered commodities). Although many of these entities are large international and domestic corporations, the Commission believes that a number of these covered entities may fall into the category of small entities.[230] According to the Small Business Administration (''SBA'') size standards, and utilizing SBA source data, the Commission estimates that between approximately 1,700 and 5,200 covered entities would be classified as ''small entities.''[231]

4. Description of projected reporting, recordkeeping, and other compliance requirements, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record

The Commission does not propose, and the revised proposed Rule does not contain, any requirement that covered entities create, retain, submit, or disclose any information. Accordingly, the revised proposed Rule would impose no recordkeeping or related data retention and maintenance or disclosure requirements on any covered entity, including small entities. Given that the revised proposed Rule does not impose any reporting requirements,[232] it is unlikely that the revised proposed Rule would impose costs to comply beyond standard costs (or skills) associated with ensuring that conduct is not fraudulent or deceptive.

5. Identification of other duplicative, overlapping, or conflicting federal rules

As discussed previously, other federal agencies have regulatory authority to prohibit in whole or in part fraudulent or deceptive conduct involving petroleum products. The SEC has authority to stop fraudulent and deceptive conduct involving the securities and securities offerings of companies involved in the petroleum industry. Additionally, the CFTC has authority to bring an action against any person who is manipulating or attempting to manipulate energy commodities.

As explained in Section IV.B. above, the Commission does not intend for the revised proposed Rule to impose contradictory requirements on regulated entities in the futures markets or otherwise. To the extent, if any, that the revised proposed Rule's requirements could duplicate requirements already established by other agencies for such markets, the revised proposed Rule should not impose any additional compliance costs. The Commission is requesting comment on the extent to which other federal standards concerning fraud and deception may duplicate, satisfy, or inform the revised proposed Rule's requirements. In addition, the Commission seeks comment and information about any statutes or rules that may conflict with the revised proposed Rule's requirements, as well as any state, local, or industry rules or policies that require covered entities to implement practices

[226] 5 U.S.C. 605.

[227] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a)(1). As noted above, Section 317.2(d) of the revised proposed Rule defines a ''person'' as ''any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.''

[228] *See* 73 FR at 48332.

[229] 42 U.S.C. 17301.

[230] Directly covered entities under this revised proposed Rule are classified as small businesses under the Small Business Size Standards component of the North American Industry Classification System (''NAICS'') as follows: petroleum refineries (NAICS code 324110) with no more than 1,500 employees nor greater than 125,000 barrels per calendar day Operable Atmospheric Crude Oil Distillation capacity; petroleum bulk stations and terminals (NAICS code 424710) with no more than 100 employees; and petroleum and petroleum products merchant wholesalers (except bulk stations and terminals) (NAICS code 424720) with no more than 100 employees. *See* SBA, Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Aug. 22, 2008), *available at* (*http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf*).

[231] The SBA publication providing data on the number of firms and number of employees by firm does not provide sufficient precision to gauge the number of small businesses that may be impacted by the revised proposed Rule accurately. The data is provided in increments of 0-4 employees, fewer than 20 employees and fewer than 500 employees. Small Business Administration, Employer Firms, & Employment by Employment Size of Firm by NAICS Codes, 2006, *available at* (*http://www.sba.gov/advo/research/us06_n6.pdf*). Thus for the 228 petroleum refiners listed, 185 show that they have less than 500 employees. Although the Commission is unaware of more than five refiners with less than 125,000 barrels of crude distillation capacity, the data may be kept by refinery, rather than refiner. Similar problems exist for the bulk terminal and bulk wholesale categories listed above, in which the relevant small business cut off is greater than 100 employees. Although the Commission sought additional comment on the number of small entities covered by the initial proposed Rule, it received none. Accordingly, the small business data set forth in this IRFA are the best estimates available to the Commission at this time. Nonetheless, the Commission continues to seek comment or information providing better data.

[232] *See* 73 FR at 48332.

that comport with the requirements of the Rule.

6. Description of any significant alternatives to the revised proposed Rule that would accomplish the stated objectives of applicable statutes and that minimize any significant economic impact of the revised proposed Rule on small entities, including alternatives considered, such as: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; and (3) any exemption from coverage of the rule, or any part thereof, for such small entities

The revised proposed Rule is narrowly tailored to reduce compliance burdens on covered entities, regardless of size. In formulating the revised proposed Rule, including the present revisions, the Commission has taken several significant steps to minimize potential burdens. Most significantly, the revised proposed Rule focuses on preventing fraud and deception in wholesale petroleum markets. At this time, the Commission has declined to include specific conduct or duty requirements, such as a duty to supply product or a duty to provide access to pipelines and terminals. In addition, the revised proposed Rule makes clear that covered entities need not disclose price, volume, and other data to the market. Finally, the revised proposed Rule contains no recordkeeping requirement.

While the Commission believes that the revised proposed Rule imposes no unique compliance costs, it nonetheless requests comment on this issue, including in particular on whether the revised proposed Rule's prohibitions would have a significant impact upon a substantial number of small entities, and what modifications, if any, to the revised proposed Rule the Commission should consider to minimize further the burden on small entities.

H. Paperwork Reduction Act

The Commission does not contemplate requiring any entity covered by the revised proposed Rule to create, retain, submit, or disclose any data. Accordingly, the revised proposed Rule does not include any new information collection requirements under the provisions of the Paperwork Reduction Act of 1995 (''PRA'').[233] However, the Commission's experience with any final rule that may be adopted under Section 811 or pursuant to its investigative and enforcement role under Section 812 may suggest a particular need to require firms to create or maintain particular information. If such a need arises, the Commission may, in the future, adopt such rules as necessary or appropriate in the public interest or for the protection of United States citizens, and will accordingly notify and submit appropriate information to OMB, where required under PRA.[234]

I. Request for Comments

The Commission seeks comment on various aspects of the revised proposed Rule. The Commission is particularly interested in receiving comments on the questions that follow. In responding to these questions, include detailed, factual supporting information whenever possible.

1. General Questions for Comment

a. Does the revised proposed Rule strike an appropriate balance between protecting consumers from petroleum market manipulation and limiting attendant costs to industry such as the chilling of legitimate business conduct and compliance burdens? In considering whether an appropriate balance is stuck discuss:

(1) the merits or flaws with having a different standard of scienter for Section 317.3(a) from Section 317.3(b);

(2) the merits or flaws of eliminating Section 317.3(b) and consolidating the Rule into a single anti-fraud prohibition as set out by Section 317.3(a);

(3) the merits or flaws of eliminating Section 317.3(b) and consolidating the Rule to a single anti-fraud prohibition as set out by Section 317.3(a), but with a scienter requirement of ''intentionally engage'' rather than ''knowingly engage;''

(4) the merits or flaws of eliminating Section 317.3(b) and consolidating the Rule to a single anti-fraud prohibition as set out by Section 317.3(a), but adding a proviso that the challenged act, practice, or course of business distort or tend to distort market conditions; discuss the consequences of adding this proviso under both scienter alternatives of ''intentionally'' and ''knowingly.''

b. Do the conduct provisions in revised proposed Rule Section 317.3 provide sufficient clarity and precision in articulating prohibited conduct? Why or why not? If not, how could the Rule be modified to achieve those goals? Would a rule limited to Section 317.3(a) improve clarity and precision without impairing the basis for issuing a rule or the goal of preventing market manipulation to the benefit of consumers? Explain.

c. Does revised proposed Rule Section 317.3 prohibit the injection of false information into market transactions? If not, how could the provision be revised to achieve that goal? Explain.

d. Does a prohibition on the injection of false information into market transactions protect the integrity of such markets? Why or why not?

e. Should a market manipulation rule reach fraudulent or deceptive conduct that does not distort or tend to distort market conditions? Why or why not? (Note: As explained in the discussion above respecting Section 317.3(b), the Commission does not intend that a requirement that the challenged conduct distort or tend to distort market conditions mean that a specific price or other market effect be an element to be demonstrated to prove a rule violation.)

f. Discuss the benefits and costs of alternatives to promulgating the revised proposed Rule, including the following: (i) declining to issue a final rule; (ii) promulgating a final rule that mirrors the initially proposed Rule; or (iii) promulgating a final rule that solely prohibits false statements.

2. Questions on Specific Provisions

a. As drafted, does Section 317.3(a) provide sufficient clarity and precision as to the contours of prohibited conduct? Explain.

b. Is it appropriate that the rule prohibit acts, practices, and courses of business that operate or would operate as a fraud or deceit on any person? Discuss the merit or lack of merit of prohibiting fraudulent or deceptive conduct. In so discussing, explain:

(1) whether Section 811 of EISA authorizes the Commission to publish a

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[233] 44 U.S.C. 3501-3521. Under the PRA, federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3).

[234] In the ANPR, the Commission solicited comment on whether covered entities should report market data, such as cost and volume data for wholesale transactions. 73 FR at 25622. In response, one commenter noted that Section 812 already addresses the making of false reports and should not be construed as giving the Commission authority to impose new reporting requirements. ISDA, ANPR, at 16 (''Neither Section 811 nor Section 812 of the EISA authorizes the Commission to impose new reporting requirements.''); *see also* CFDR, ANPR, at 16 (''The Commission should not promulgate a rule that purports to impose disclosure obligations on market participants where no disclosure obligations otherwise exist under current law.''). *But see, e.g.*, PMAA, ANPR, at 8-9 (stating that the Commission has authority under Section 811 to impose new reporting requirements); NPGA, ANPR, at 3 (''The authority to mandate the maintenance and submission of [information regarding wholesale petroleum transactions] is inherent in the EISA prohibitions against manipulative activities in Section 811 and the reporting of false information to Federal authorities in Section 812.'').

rule that prohibits *all* acts, practices, or courses of conduct that operate or would operate as a fraud or deceit on any person, including, *e.g.*, common law fraud in which injury may not extend beyond the individual parties or otherwise impair the integrity of wholesale petroleum markets at large;

(2) whether, as a policy matter, Section 317.3(a) should prohibit *all* acts, practices, or courses of conduct that operate or would operate as a fraud or deceit on any person, including, *e.g.*, common law fraud in which injury may not extend beyond the individual parties or otherwise impair the integrity of wholesale petroleum markets at large; if not, discuss how the reach of the provision should be bounded, including, *e.g.*, the merits of a proviso that the challenged conduct distort or tend to distort market conditions.

c. Discuss the merits or flaws of the Section 317.3(a) scienter standard that the challenged person ''knowingly'' act. In the context of wholesale petroleum markets and in comparison to the tentative ''knowingly engage'' standard, how would an alternative ''intentionally engage'' standard affect the ability of the Commission to protect consumers from deleterious market manipulation? What differences, if any, are there between the two alternative standards respecting the ability of firms to comply with Section 317.3(a), including the costs of compliance?

d. As explained in the discussion of revised proposed Rule Section 317.3(b), the Commission proposes that the Rule prohibit omissions of material fact—specifically, omissions of material facts that are necessary to ensure that a previously made statement is not misleading, provided that the informative content of the misleading statement distorts or tends to distort market conditions for any such product. What are the costs and benefits of this provision?

e. Describe acts, practices, or courses of conduct, if any, that would threaten the integrity of wholesale petroleum markets that could not be reached by Section 317.3(a) but could be reached by Section 317.3(b). If such conduct exists, what is its incidence? In comparison to conduct injurious to the integrity of wholesale petroleum markets reached by Section 317.3(a), does the potential injury from conduct reached by Section 317.3(b) justify its likely enforcement and compliance costs? Explain.

f. Does the inclusion of the explicit scienter requirement in revised proposed Rule Section 317.3(b) adequately reduce any danger of a chilling effect on the flow of information essential to the functioning of, and transparency in, wholesale petroleum markets? Why or why not?

g. Does the inclusion of the explicit scienter requirement—*intentionally fail*—in revised proposed Rule Section 317.3(b) sufficiently reduce the danger of a chilling effect on benign or desirable business activity within wholesale petroleum markets? Why or why not?

h. What forms of information, if any, should market participants be required to disclose in order to promote the functioning and integrity of wholesale petroleum markets? Explain. Under what circumstances, if any, would the failure to provide such information render otherwise truthful statements misleading?

i. To what extent would any danger of a chilling effect on benign or desirable business activity depend upon the existence (or lack thereof) of mandatory disclosure obligations in the petroleum industry? Explain.

j. If the merits of Section 317.3(b) as currently proposed outweigh any flaws or dangers, should it be expanded to require that a person update or correct information if circumstances change? How, if at all, would such an expansion alter the cost/benefit calculus? Explain.

k. What, if any, danger arises if the scienter standard in revised proposed Rule Section 317.3(b) were changed to ''knowingly fail''? Explain.

l. Is it clear that the ''intentionally'' scienter standard in revised proposed Rule Section 317.3(b) means that the Commission need only show that a violator intends to engage in fraudulent or deceptive conduct—without regard to the violator's intent to affect market conditions or knowledge of the probable consequences of such conduct? Why or why not? If not, how could the scienter language be revised to limit the evidentiary burden to requiring only a showing that the fraudulent or deceptive conduct was intentional?

m. What types of evidence might be sufficient to demonstrate the proposed scienter standard in revised proposed Rule Section 317.3(b)? Explain. What types of evidence might be sufficient to demonstrate the proposed scienter standard in revised proposed Rule Section 317.3(a)? Discuss with particular emphasis on how, if at all, the evidentiary requirements to prove scienter differ between Section 317.3(b) and Section 317.3(a).

n. Is it clear that the ''intentionally fail'' scienter standard in revised proposed Rule Section 317.3(b) is neither a recklessness standard nor a specific intent standard? If not, how could the scienter language be revised to make that clear? Explain.

o. As explained in the discussion of revised proposed Rule Section 317.3(b), the prohibitions language of Section 811 of EISA is nearly identical to Section 10(b) of the SEA from which Rule 10b-5 derives. Notwithstanding this similarity, does the statutory language in Section 811—''as necessary or appropriate''—provide a sufficient basis for tailoring the scienter requirement of a FTC market manipulation rule to address wholesale petroleum markets? Explain.

p. Intent need not be demonstrated to prove that an act or practice is deceptive or unfair in violation of Section 5 of the FTC Act. Does the presence of explicit scienter requirements in revised proposed Rule Section 317.3 create risk of judicial confusion regarding the differing elements of proof for an FTC market manipulation rule and for Section 5 of the FTC Act respecting unfair or deceptive practices? Explain.

q. Does the Section 317.3(b) proviso that a misleading statement distort or tend to distort market conditions for any covered product sufficiently ensure that the Rule strikes an appropriate balance between protecting consumers from petroleum market manipulation and limiting the costs to industry attendant with achieving that protection? Would adding the proviso to Section 317.3(a) achieve a better balance between protecting consumers and attendant industry costs in the enforcement of that provision of the Rule? Explain.

r. Does the Section 317.3(b) proviso that a misleading statement distort or tend to distort market conditions for any covered product unduly limit the Commission's ability to prohibit misleading statements that threaten the integrity of wholesale petroleum markets? Why or why not? If not, how could the provision be revised to achieve that goal? Explain. Were the proviso added to Section 317.3(a), would the Commission's ability to protect the integrity of wholesale petroleum markets be impaired? Explain.

s. Is it clear that the Section 317.3(b) proviso that a misleading statement distort or tend to distort market conditions for any covered product is not intended to create a price or market effects element of proof? *I.e.*, is it clear from the language of Section 317.3(b) that in order to establish a Rule violation, the Commission need not prove any specific price or market effect? If not, how can the Rule be revised to make that point clear? Discuss.

t. What types of evidence might be sufficient to demonstrate that a misleading statement distorts or tends to

distort market conditions for any covered wholesale petroleum product? For example, should it be sufficient simply to show that the informative content of a misleading statement is of the type typically absorbed by the market and incorporated into market prices? Explain.

u. Is it clear that a violation of revised proposed Rule Section 317.3 does not require that the violator possess market power—and need not have reduced competition—in a relevant antitrust market, as these concepts are defined by antitrust legal precedent? Why or why not? If not, how could the language be revised to make clear that neither a showing of market power nor a reduction in competition is an element of proof?

v. Consider the following alternative rule language:

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to engage in any act (including the making of any untrue statement), practice, or course of conduct with the intent* to defraud or deceive, provided that such act, practice, or course of conduct distorts or tends to distort market conditions for any such product.

* The phrase ''with the intent'' shall mean that the alleged violator intended to mislead—regardless of whether he or she specifically intended to affect market prices (*e.g.*, specific intent), or knew or must have known of the probable consequences of such conduct—and regardless of whether the conduct was likely to succeed in defrauding or deceiving the target.

Would this alternative language better achieve (or would it not better achieve) the goals of Section 811 of EISA than the revised proposed Rule discussed in this Notice. Explain. Discuss the merits or flaws, if any, of this alternative language?

w. Hypothetical questions:

(1) Company ABC reports a trade to the XYZ Price Service, a service that collects transactional data and uses the data to set a benchmark price that the industry uses to negotiate spot purchases of refined product. XYZ procedures, which are well known throughout the industry, require reporting companies to identify transactions below a specified volume to limit the impact of transactions with inconsequential volumes on the benchmark price. The volume of ABC's trade is below the specified volume, but:

(a) ABC inadvertently omits that information.

(b) ABC establishes procedures to ensure that persons reporting transactions know to identify transactions below the specified amount but the individual reporting this transaction fails to follow those procedures.

(c) ABC intentionally omits the information identifying the trade.

(2) Trader A receives a request from RST Refinery for crude oil of a particular grade, specifying that it prefers not to buy crude from the country of Cepo for political reasons. Trader A is unable to find the kind of crude RST requires except in Cepo. Trader A:

(a) Sells the crude from Cepo to RST without disclosing that it is from Cepo.

(b) Sells the crude to RST and represents that it is from the country of West Friendly, knowing that it is from Cepo.

(c) Does not know and does not ask where the crude is from and sells it to RST without representing its origin.

Applying (1) the revised proposed rule language appearing in this Notice and (2) the alternative rule language appearing above in Question 2v. to the facts provided in these hypothetical examples, discuss differences, if any, in the outcome of an enforcement action. Which result would be more desirable and why? Also speak to the effectiveness and ability of each rule version to reach any harmful manipulative conduct contained in the fact pattern, the relative burdens on the Commission to enforce the rule successfully, and the relative risks of enforcement error.

3. Regulatory Flexibility Act

The Commission requests that commenters provide information about the potential scope and economic impact of the revised proposed Rule so that the Commission may better assess the economic impact of the language of any final rule if it determines to publish such rule. Specifically, the Commission requests comments on:

a. the number and type of small entities affected by the revised proposed Rule;

b. any or all of the provisions in the revised proposed Rule with regard to: (i) the impact of the provision(s) (including benefits and costs to implement and comply with the Rule or Rule provisions), if any; (ii) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the revised proposed Rule on small entities;

c. ways in which the revised proposed Rule could be modified to reduce any costs or burdens on small entities, including whether and how technological developments could further reduce the costs of implementing and complying with the revised proposed Rule for small entities;

d. any information quantifying the economic costs and benefits of the revised proposed Rule on the entities covered, including small entities; and

e. the identity of any relevant federal, state, or local rules that may duplicate, overlap, or conflict with the revised proposed Rule.

List of Subjects in 16 CFR Part 317

Trade practices.

■ Accordingly, for the reasons set forth in the preamble, the Commission proposes to amend Title 16, Chapter 1, Subchapter C of the Code of Federal Regulations to add a new part 317 as follows:

PART 317—PROHIBITION OF ENERGY MARKET MANIPULATION RULE

Sec.

Authority: 42 U.S.C. 17301-17305; 15 U.S.C. 41-58.

§ 317.1 Scope.

This part implements Subtitle B of Title VIII of The Energy Independence and Security Act of 2007 (''EISA''), Pub. L. 110-140, 121 Stat. 1723 (December 19, 2007), *codified at* 42 U.S.C. 17301-17305. This rule applies to any person over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*

§ 317.2 Definitions.

The following definitions shall apply throughout this rule:

(a) *Crude oil* means any mixture of hydrocarbons that exists:

(1) In liquid phase in natural underground reservoirs and that remains liquid at atmospheric pressure after passing through separating facilities, or

(2) As shale oil or tar sands requiring further processing for sale as a refinery feedstock.

(b) *Gasoline* means:

(1) Finished gasoline, including, but not limited to, conventional, reformulated, and oxygenated blends, and

(2) Conventional and reformulated gasoline blendstock for oxygenate blending.

(c) *Knowingly* means with actual or constructive knowledge such that the

person knew or must have known that his or her conduct was fraudulent or deceptive.

(d) *Person* means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(e) *Petroleum distillates* means:

(1) Jet fuels, including, but not limited to, all commercial and military specification jet fuels, and

(2) Diesel fuels and fuel oils, including, but not limited to, No. 1, No. 2, and No. 4 diesel fuel, and No. 1, No. 2, and No. 4 fuel oil.

(f) *Wholesale* means:

(1) All purchases or sales of crude oil or jet fuel; and

(2) All purchases or sales of gasoline or petroleum distillates (other than jet fuel) at the terminal rack or upstream of the terminal rack level.

§ 317.3 Prohibited practices.

It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, to:

(a) Knowingly engage in any act, practice, or course of business—including the making of any untrue statement of material fact—that operates or would operate as a fraud or deceit upon any person; or

(b) Intentionally fail to state a material fact that under the circumstances renders a statement made by such person misleading, provided that such omission distorts or tends to distort market conditions for any such product.

§ 317.4 Preemption.

The Federal Trade Commission does not intend, through the promulgation of this Rule, to preempt the laws of any state or local government, except to the extent that any such law conflicts with this Rule. A law is not in conflict with this Rule if it affords equal or greater protection from the prohibited practices set forth in § 317.3.

§ 317.5 Severability.

The provisions of this Rule are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following attachment will not appear in the Code of Federal Regulations.

Federal Register

Attachment A

NPRM Commenters

Association of Oil Pipe Lines (''AOPL'')

American Petroleum Institute (''API'')

Argus Media Inc. (''Argus'')

American Trucking Associations, Inc. (''ATA'')

Air Transport Association of America, Inc. (''ATAA'')

Andrew Boxer, Ellis Boxer & Blake (''Boxer'')

Sharon Brown-Hruska, National Economic Research Associates, Inc. (''Brown-Hruska'')

California Attorney General, Edmund G. Brown Jr. (''CA AG'')

Canadian Association of Petroleum Producers (''CAPP'')

Consumer Federation of America, Mark Cooper, Director of Research (''CFA1''; ''CFA2'')

New York City Bar Association, Committee on Futures & Derivatives Regulation (''CFDR'')

U.S. Commodity Futures Trading Commission, Terry S. Arbit, General Counsel (''CFTC (Arbit)'')

U.S. Commodity Futures Trading Commission, Bart Chilton, Commissioner (''CFTC (Chilton)'')

John Q. Public (''Consumer'')

Flint Hills Resources, LP (''Flint Hills'')

Winfried Fruehauf, National Bank Financial (''Fruehauf'')

James D. Hamilton, University of California, San Diego (''Hamilton'')

Illinois Petroleum Marketers Association (''IPMA'')

International Swaps and Derivatives Association, Inc. (''ISDA'')

Futures Industry Association, CME Group, Managed Funds Association, Intercontinental Exchange, Inc., National Futures Association (''MFA'')

Michigan Petroleum Association/ Michigan Association of Convenience Stores (''MPA'')

Mississippi Attorney General, Jim Hood (''MS AG'')

Lisa Murkowski, United State Senator, State of Alaska (''Murkowski'')

Timothy J. Muris and J. Howard Beales, III (''Muris'')

Navajo Nation, Resolute Natural Resources Company, and Navajo Nation Oil and Gas Company (''Navajo Nation'')

Nebraska Petroleum Marketers & Convenience Store Association (''NPCA'')

National Petrochemical and Refiners Association (''NPRA'')

Craig Pirrong, The University of Houston: Bauer College of Business (''Pirrong'')

Plains All American Pipeline, L.P. (''Plains'')

Platts (''Platts'')

Petroleum Marketers Association of America (''PMAA'')

Society of Independent Gasoline Marketers of America (''SIGMA'')

Sutherland Asbill & Brennan LLP (''Sutherland'')

David J. Van Susteren, Fulbright & Jaworski LLP (''Van Susteren'')

Federal Register

Attachment B

Workshop Participants

American Bar Association Section of Antitrust Law's Fuel & Energy Industry Committee (''ABA Energy''): Bruce McDonald, Jones Day LLP

Association of Oil Pipe Lines (''AOPL''): Linda G. Stuntz, Stuntz, Davis & Staffier, PC

American Petroleum Institute (''API''): Jonathan Gimblett, Covington & Burling LLP

American Petroleum Institute (''API''): Robert A. Long, Jr., Covington & Burling LLP

Argus Media Inc. (''Argus''): Dan Massey

Consumer Federation of America (''CFA''): Mark Cooper

New York City Bar Association, Committee on Futures & Derivatives Regulation (''CFDR''): Charles R. Mills, K&L Gates

CME Group (''CME''): De'Ana Dow

Flint Hills Resources, LP (''Flint Hills''): Alan Hallock

International Swaps and Derivatives Association, Inc. (''ISDA''):

Athena Y. Velie, McDermott, Will & Emery LLP

Futures Industry Association, CME Group, Managed Funds Association, Intercontinental Exchange, Inc., National Futures Association (''MFA''):

Mark D. Young, Kirkland & Ellis LLP

Resolute Natural Resources Company (''Navajo Nation''): James Piccone

Navajo Nation Oil and Gas Corporation (''Navajo Nation''): Perry Shirley

National Petrochemical and Refiners Asssociation (''NPRA''):

Susan S. DeSanti, Sonnenschein Nath & Rosenthal LLP

National Petrochemical and Refiners Association (''NPRA''): Charles T. Drevna

Craig Pirrong, The University of Houston: Bauer College of Business (''Pirrong'')

Platts (''Platts''): John Kingston

Petroleum Marketers Association of America (''PMAA''):

Robert Bassman, Bassman, Mitchell & Alfano, Chtd.

Society of Independent Gasoline Marketers of America (''SIGMA''): James D. Barnette,

Steptoe & Johnson LLP
Society of Independent Gasoline Marketers of America (''SIGMA''): R. Timothy Columbus, Steptoe & Johnson LLP
David J. Van Susteren, Fulbright & Jaworski LLP (''Van Susteren'')

Federal Register
Attachment C
ANPR Commenters

American Bar Association/Section of Antitrust Law (''ABA'')
Association of Oil Pipe Lines (''AOPL'')
American Petroleum Institute and the National Petrochemical and Refiners Association (''API'')
Patrick Barrett (''Barrett'')
Lawrence Barton (''Barton'')
Dave Beedle (''Beedle'')
Stanley Bergkamp (''Bergkamp'')
Louis Berman (''Berman'')
Bezdek Associates, Engineers PLLC (''Bezdek'')
Katherine Bibish (''Bibish'')
John Booke (''Booke'')
Bradley (''Bradley'')
Jeremy Bradley (''J. Bradley'')
Charles Bradt (''Bradt'')
Wendell Branham (''Branham'')
Lorraine Bremer (''Bremer'')
Gloria Briscolino (''Briscolino'')
Rick Brownstein (''Brownstein'')
Byrum (''Byrum'')
Canadian Association of Petroleum Producers (''CAPP'')
Jeff Carlson (''Carlson'')
Jacquelynne Catania (''Catania'')
Marie Cathey (''Cathey'')
New York City Bar, Association Committee on Futures & Derivatives Regulation (''CFDR'')
U.S. Commodities Futures Trading Commission (''CFTC'')
Manuel Chavez (''Chavez'')
Michael Chudzik (''Chudzik'')
D. Church (''Church'')
Earl Clemons (''Clemons'')
Dan Clifton (''Clifton'')
Kim Cruz (''Cruz'')
Jerry Davidson (''Davidson'')
Don Deresz (''Deresz'')
Charlene Dermond (''Dermond'')
Kimberly DiPenta (''DiPenta'')
Penny Donaly (''Donaly1'')
Penny Donaly (''Donaly2'')
Penny Donaly (''Donaly3'')
Penny Donaly (''Donaly4'')
Deep River Group, Inc. (''DRG'')
Harold Ducote (''Ducote'')
Mary Dunaway (''Dunaway'')
Econ One Research, Inc. (''Econ One'')
Terri Edelson (''Edelson'')
Kevin Egan (''Egan'')
DJ Ericson (''Ericson'')
Mark Fish (''Fish'')
Flint Hills Resources, LP (''Flint Hills'')
Bob Frain (''Frain'')
Joseph Fusco (''Fusco'')
Tricia Glidewell (''Glidewell'')
Robert Gould (''Gould'')
James Green (''Green'')
Michael Greenberger (''Greenberger'')
Christine Gregoire, Governor, State of Washington (''Gregoire'')
Hagan (''Hagan'')
Toni Hagan (''Toni'')
Charles Hamel (''Hamel'')
Chris Harris (''Harris'')
Thomas Herndon (''Herndon'')
Johnny Herring (''Herring'')
Hess Corporation (''Hess'')
David Hill (''Hill'')
Hopper (''Hopper'')
Sharon Hudecek (''Hudecek'')
IntercontinentalExchange, Inc. (''ICE'')
Institute for Energy Research (''IER'')
Independent Lubricant Manufacturers Association (''ILMA'')
Illinois Petroleum Marketers Association (''IPMA'')
International Swaps and Derivatives Association, Inc. (''ISDA'')
Micki Jay (''Jay'')
Kenneth Jensen (''Jensen'')
Paul Johnson (''Johnson'')
Tacie Jones (''Jones'')
Joy (''Joy'')
John Kaercher (''Kaercher'')
Kas Kas (''Kas'')
Kipp (''Kipp'')
Paola Kipp (''P. Kipp'')
Jerry LeCompte (''LeCompte'')
Kurt Lennert (''Lennert'')
Loucks (''Loucks'')
Robert Love (''Love'')
R. Matthews (''Matthews'')
Catherine May (''May'')
Mike Mazur (''Mazur'')
Sean McGill (''McGill'')
Kathy Meadows (''Meadows'')
Futures Industry Association, CME Group, Managed Funds Association, IntercontinentalExchange, National Futures Association (''MFA'')
Bret Morris (''Morris'')
Theresa Morris-Ramos (''Morris-Ramos'')
Scott Morosini (''Morosini'')
Timothy J. Muris and J. Howard Beales, III (''Muris'')
Navajo Nation Resolute Natural Resources Company and Navajo Nation Oil and Gas Company (''Navajo Nation'')
Laurie Nenortas (''Nenortas'')
James Nichols (''Nichols'')
Virgil Noffsinger (''Noffsinger'')
Noga (''Noga'')
Richard Nordland (''Nordland'')
National Propane Gas Association (''NPGA'')
Kerry O'Shea, (''O'Shea'')
Jeffery Parker (''Parker'')
Pamela Parzynski (''Parzynski'')
Brook Paschkes (''Paschkes'')
Brijesh Patel (''Patel'')
Stefanie Patsiavos (''Patsiavos'')
P D (''PD'')
Guillermo Pereira (''Pereira'')
James Persinger (''Persinger'')
Mary Phillips (''Phillips'')
Plains All American Pipeline, LLP (''Plains'')
Platts (''Platts'')
Betty Pike (''Pike'')
Petroleum Marketers Association of America (''PMAA'')
Joel Poston (''Poston'')
Radzicki (''Radzicki'')
Gary Reinecke (''Reinecke'')
Steve Roberson (''Roberson'')
Shawn Roberts (''Roberts'')
Linda Rooney (''Rooney'')
Mel Rubinstein (''Rubinstein'')
secret (''secret'')
Joel Sharkey (''Sharkey'')
Society of Independent Gasoline Marketers of America (''SIGMA'')
Daryl Simon (''Simon'')
David Smith (''D. Smith'')
Donald Smith (''Do. Smith'')
Mary Smith (''M. Smith'')
Donna Spader (''Spader'')
Stabila (''Stabila'')
Alan Stark (''A. Stark'')
Gary Stark (''G. Stark'')
Robert Stevenson (''Stevenson'')
Ryan Stine (''Stine'')
Maurice Strickland (''Strickland'')
Sutherland, Asbill, and Brennan, LLP (''Sutherland'')
L.D. Tanner (''Tanner'')
Dennis Tapalaga (''Tapalaga'')
Tennessee Oil Marketers Association (''TOMA'')
Theisen (''Theisen'')
Greg Turner (''Turner'')
U.S. citizen (''U.S. citizen'')
U.S. Department of Justice, Criminal Fraud Section (''USDOJ'')
Jeff Van Hecke (''Van Hecke'')
Louis Vera (''Vera'')
Thomas Walker (''Walker'')
Victoria Warner (''Warner'')
Lisa Wathen (''Wathen'')
Watson (''Watson'')
Gary Watson (''G. Watson'')
Joseph Weaver (''Weaver'')
Webb (''Webb'')
Vaughn Weming (''Weming'')
Douglas Willis (''Willis'')

[FR Doc. E9–9224 Filed 4–21–09: 8:45 am]
BILLING CODE 6750–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2008–0348; FRL–8784–5]

RIN 2060–AO58

Methods for Measurement of Filterable PM_{10} and $PM_{2.5}$ and Measurement of Condensable Particulate Matter Emissions From Stationary Sources

Correction

In proposed rule document E9–6178 beginning on page in the issue of Wednesday, March 25, 2009 make the following corrections:

Appendix M to Part 51 [Corrected]

1. On page 12989, Equation 24 is reprinted to read as set forth below:

$$\Delta p_s = \Delta p_m \left[\frac{C_p}{C_p'}\right]^2 \quad \text{Eq. 24}$$

2. On page 12991, Equation 40 is reprinted to read as set forth below:

$$I = \left(\frac{100\, T_s\, V_{ms}\, 29.92}{60\, v_s\, \theta\, A_n\, P_s\, (1 - B_{ws})\, 528}\right) \quad \text{Eq. 40}$$

[FR Doc. Z9–6178 Filed 4–21–09; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0528; FRL–8895–2]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Reasonable Further Progress Plan, Motor Vehicle Emissions Budgets and 2002 Emissions Inventory; Houston-Galveston-Brazoria 1997 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Texas State Implementation Plan (SIP) to meet the Reasonable Further Progress (RFP) requirements of the Clean Air Act (CAA) for the Houston-Galveston-Brazoria (HGB) moderate 1997 8-hour ozone nonattainment area. EPA is also proposing to approve the RFP motor vehicle emissions budgets (MVEBs) and the 2002 Base Year Emission Inventory associated with the revision. EPA is proposing to approve the SIP revision because it satisfies the RFP and Emissions Inventory requirements for 1997 8-hour ozone nonattainment areas classified as moderate, and demonstrates further progress in reducing ozone precursors. EPA is proposing to approve the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

DATES: Written comments must be received on or before *May 22, 2009.*

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the Addresses section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: April 10, 2009.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. E9–9213 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2005–0049; FRL–8405–3]

RIN 2070–AJ48

Lead; Minor Amendments to the Renovation, Repair, and Painting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two minor revisions to the final Lead Renovation, Repair, and Painting Program (RRP) rule that published in the **Federal Register** on April 22, 2008. First, EPA is proposing to require accredited providers of renovator or dust sampling technician training to submit post-course notifications, including digital photographs of each successful trainee, to EPA. The 2008 rule establishes accreditation, training, certification, and recordkeeping requirements as well as work practice standards on persons performing renovations for compensation in most pre-1978 housing and child-occupied facilities. The post-course notification requirement, designed to supply important information for EPA's compliance monitoring efforts, was inadvertently omitted from the final RRP rule's regulatory text, although it was discussed in the preamble of the final rule. In addition, EPA is proposing to remove the requirement for accredited lead-based paint activities training providers—those who provide inspector, risk assessor, project designer, and abatement supervisor and worker training—to submit to EPA a digital photograph of each successful trainee along with their post-course notifications. That requirement, inadvertently imposed as part of the final RRP rule, is unnecessary because EPA already receives photographs of these individuals through other means.

DATES: Comments must be received on or before May 22, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0049, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2005–0049. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0049. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Cindy Wheeler, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–0484; e-mail address: *wheeler.cindy @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you provide or plan to provide training in lead-safe building renovation work practices or training for dust sampling technicians. Potentially affected entities may include, but are not limited to:

• Other technical and trade schools (NAICS code 611519), e.g., training providers.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

A. Introduction

In the **Federal Register** issue of April 22, 2008, under the authority of sections 402(c)(3), 404, 406, and 407 of the Toxic Substances Control Act (TSCA), EPA issued its final RRP rule (Ref. 1). The final RRP rule, codified in 40 CFR part 745, subparts E, L, and Q, addresses lead-based paint hazards created by renovation, repair, and painting activities that disturb lead-based paint

in target housing and child-occupied facilities.

''Target housing'' is defined in TSCA section 401 as any housing constructed before 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. The final RRP rule defines a child-occupied facility as a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may be located in public or commercial buildings or in target housing.

The final RRP rule establishes requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; for renovation work practices; and for recordkeeping. Interested States, Territories, and Indian Tribes may apply for and receive authorization to administer and enforce all of the elements of the new renovation requirements. More information on the final RRP rule may be found in the **Federal Register** document announcing the final RRP rule (Ref. 1) or on EPA's website at *http://www.epa.gov/lead/pubs/renovation.htm*.

Many provisions of the final RRP rule were derived from the existing lead-based paint activities regulations at 40 CFR part 745, subpart L (Ref. 2). These existing regulations were promulgated in 1996 under TSCA section 402(a), which defines lead-based paint activities in target housing as inspections, risk assessments, and abatements. The 1996 regulations cover lead-based paint activities in target housing and child-occupied facilities, along with limited screening activities called lead hazard screens. These regulations established an accreditation program for training providers and a certification program for individuals and firms performing these activities. Training course accreditation and individual certification was made available in five disciplines: Inspector, risk assessor, project designer, abatement supervisor, and abatement worker. In addition, these lead-based paint activities regulations established work practice standards and recordkeeping requirements for lead-based paint activities in target housing and child-occupied facilities.

A 2004 amendment to the lead-based paint activities regulations established notification procedures for certified professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses (Ref. 3). Since the effective date of the 2004 amendment, accredited training programs have been required to notify EPA before providing initial or refresher lead-based paint activities training courses and again following completion of these training courses. Both notifications must include information about the course, while the post-course notification also must include identifying information on the successful trainees. These notification requirements were designed to facilitate compliance monitoring by EPA.

The final RRP rule created two new training disciplines in the field of lead-based paint: Renovator and dust sampling technician. Persons who successfully complete renovator training from an accredited training provider are certified renovators, who are responsible for ensuring that renovations to which they are assigned are performed in compliance with the work practice requirements set out in 40 CFR 745.85. Persons who successfully complete dust sampling technician training from an accredited training provider are certified dust sampling technicians, who may be called upon to collect optional dust samples after renovations have been completed.

While the training disciplines, the work practice standards, and the recordkeeping requirements of the final RRP rule differ from those established in the lead-based paint activities regulations, EPA determined that the accreditation requirements imposed on persons providing lead-based paint activities training would also be effective for persons providing renovation training. Therefore, the final RRP rule amended 40 CFR 745.225 to cover persons who provide or wish to provide renovation training for the purposes of the final RRP rule.

As amended, 40 CFR 745.225 requires training providers who wish to provide lead-based paint activities or renovation training for the purposes of the EPA's lead-based paint programs to be accredited by EPA. The requirements for each course of study are described in detail at 40 CFR 745.225 as are the operational requirements for training programs and the process for obtaining accreditation.

B. Post-Course Notifications

While the final RRP rule amended 40 CFR 745.225(c)(13) to require pre-course notifications from accredited renovation training providers, a similar amendment to 40 CFR 745.225(c)(14), the post-course notification requirement, was inadvertently omitted. EPA, therefore, is proposing to amend 40 CFR 745.225(c)(14) to require post-course notifications from accredited providers of renovator or dust sampling technician training. These include conforming changes to 40 CFR 745.225(c)(14)(iii) to make it clear that all methods of post-course notification are available to both renovation training providers and lead-based paint activities training providers.

The post-course notification requirement is particularly critical for implementation of the final RRP rule, because EPA determined that it was not necessary for renovators or dust sampling technicians to apply to EPA to obtain their certifications. A successful trainee's course completion certificate serves as his or her certification. In contrast, lead-based paint inspectors, risk assessors, project designers, and abatement supervisors and workers must all apply to EPA for certification before they can perform lead-based paint activities such as inspections or abatements in target housing and child-occupied facilities. The individual application process and requirements are described in 40 CFR 745.226(a). In promulgating the final RRP rule, EPA decided not to require renovators and dust sampling technicians to apply to EPA for certification for several reasons. The final RRP rule did not require any additional education or work experience for renovators or dust sampling technicians, so there would be no additional information necessitating EPA review in connection with an application. In addition, the final RRP rule did not impose a third-party examination similar to that required for inspector, risk assessor, or supervisor certification candidates, so there would be no need for EPA to provide letters admitting candidates to testing. Finally, EPA stated specifically in the preamble to both the RRP proposed rule and final rule that EPA would receive course completion information from accredited renovation training course providers (Ref. 1 at 21723 and Ref. 4 at 1608). Both preambles note that with this information, EPA will have a complete list of certified renovators and will be able to check to see if a particular course completion certificate holder appeared on a course completion list submitted by the training course provider identified on the certificate. When EPA

inspects a renovation job for compliance with these regulations, EPA will have the ability to verify, to the same extent, the validity of a course completion certificate held by a renovator at that job, because the final RRP rule requires certified renovators and dust sampling technicians to have copies of their course completion certificates at any job sites where they are working. In fact, two commenters supported EPA's approach and specifically mentioned post-course notifications from training providers as a way to monitor compliance with the training and certification requirements (Refs. 5 and 6). One thought that it would also reduce paperwork for both renovators and the Agency (Ref. 5). EPA requests comment on the feasibility and appropriateness of these post-course notification requirements for accredited providers of renovator or dust sampling technician training.

C. Digital Photographs of Successful Trainees

EPA's proposed amendment to 40 CFR 745.225(c)(14) to require post-course notifications from accredited renovator or dust sampling technician training providers would also include the requirement to submit digital photographs of each successful trainee as part of each post-course notification. Some commenters on the proposed RRP rule expressed reservations about EPA's ability to monitor compliance with the renovation training and certification requirements absent a formal certification application process. A number of commenters suggested a photographic identification card be issued to successful renovator and dust sampling technician trainees as a way to improve the Agency's ability to monitor compliance. EPA intended to adopt the alternative suggested by one commenter, that of requiring training providers to include a photograph of the trainee on each course completion certificate and to submit those photographs to EPA (Ref. 7). EPA noted that this would assist compliance inspectors in determining whether a particular individual at a work site had in fact successfully completed accredited training (Ref. 1 at 21723, 21726). The final RRP rule did amend 40 CFR 745.225(c)(8) to require renovator and dust sampling technician course completion certificates to bear a photograph of the trainee.

The final RRP rule also amended 40 CFR 745.225(c)(14) to require training providers to submit digital photographs of each successful trainee as part of their post-course notifications. However, language limiting the requirement to accredited providers of renovator or dust sampling technician training courses was inadvertently omitted from the final RRP rule. EPA did not intend for the requirement to apply to accredited providers of lead-based paint activities (inspector, risk assessor, project designer, and abatement supervisor and worker) training because, as part of the individual certification application process, EPA already receives photographs from individual certification candidates at or about the time that the individuals complete their training. These photographs are then incorporated into the certification documents that EPA issues to successful candidates and maintained in EPA's Federal Lead-based Paint Program database. This provides an independent verification of certification documents encountered by compliance inspectors in the field. Therefore, because an additional photograph submission is unnecessary, EPA is proposing to eliminate the requirement that accredited providers of lead-based paint activities training submit a digital photograph of each successful trainee along with their post-course notifications. EPA requests comment on the feasibility and appropriateness of requiring accredited training providers, whether they provide renovation or lead-based paint activities training, to submit digital photographs of successful trainees along with post-course notifications.

D. Effective Date

EPA is proposing to find under the Administrative Procedure Act (APA), 5 U.S.C. 553(d)(3), that good cause exists to dispense with the 30–day delay in the effective date of the final rule that EPA intends to promulgate based upon this proposed rule. It is critically important to establish a post-course notification requirement for renovation training providers before the first accredited training courses are offered. Renovation training course providers may begin submitting their applications for accreditation on April 22, 2009. While it is likely to take some time for EPA to process these applications and issue accreditations, training providers may begin providing training as soon as they receive their accreditation. As discussed, this information is essential to EPA's ability to monitor compliance with the training and certification requirements of the final RRP rule. If accredited training courses are offered before the notification requirement is made effective, EPA will not receive a record of the persons who have become certified renovators or dust sampling technicians through those courses and EPA will be unable to independently verify the validity of course completion certificates held by these individuals when one is encountered during a compliance inspection. In addition, delaying the effective date could mean that these individuals would not be part of EPA's database of certified renovators and dust sampling technicians unless and until they take a refresher course. Indeed, given the way the program is structured, it would be contrary to the public interest to not impose this requirement before training providers are accredited and begin training renovators and dust sampling technicians. The public has been on notice of EPA's intentions regarding the post-course notification requirement since EPA published the RRP proposed rule. In addition, the final RRP rule already requires that renovation and dust sampling technician training providers produce training certificates with the student's photograph. Thus, training providers must already have the capability to take and reproduce pictures of students. Accordingly, this is not a circumstance where fairness requires that the regulated community be given time beyond promulgation to prepare before a regulatory requirement becomes effective. EPA therefore proposes to find that there is good cause for a final rule making this change to be effective immediately upon publication in the **Federal Register**.

Finally, EPA also believes that it is not in the public interest to impose unnecessary burdens such as the inadvertently created requirement for accredited lead-based paint activities training providers to submit digital photographs of successful trainees along with their post-course notifications to EPA. As discussed, EPA already receives photographs of these individuals at or about the time that these individuals complete their training. Requiring accredited training providers to also provide photographs of these individuals is redundant and unnecessary. EPA, therefore, proposes to find that there is good cause for a final rule making this change to be effective immediately upon publication in the **Federal Register**. EPA requests comment on whether an immediately effective final rule should be issued.

III. References

1. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7).

2. EPA. Lead; Requirements for Lead-based Paint Activities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9).

3. EPA. Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training; Final Rule. **Federal Register** (69 FR 18489, April 8, 2004) (FRL–7341–5).

4. EPA. Lead; Renovation, Repair, and Painting Program; Proposed Rule. **Federal Register** (71 FR 1588, January 10, 2006) (FRL–7755–5).

5. National Association of Homebuilders. May 25, 2006.

6. State of Maine, Department of Environmental Protection. May 17, 2006.

7. State of Wisconsin, Department of Health and Family Services. May 23, 2006.

8. EPA. Information Collection Request (ICR); final rule addendum to an existing EPA ICR, entitled *TSCA Sections 402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities.* Docket ID Number EPA–HQ–OPPT–2005–0049–0925. March 2008.

9. EPA, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis for the TSCA Lead Renovation, Repair, and Painting Program Final Rule for Target Housing and Child-Occupied Facilities. March 2008.

10. EPA, OPPT. Economic Analysis for the TSCA Section 402 Lead-Based Paint Program Accreditation and Certification Fee Rule. March 2009.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) it has been determined that this is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). However, the costs of the requirement that accredited renovator and dust sampling technician training providers submit post-course notifications were accounted for in the ICR addendum prepared for the final RRP rule (Ref. 8). Those costs were estimated to be $347,720 in the first year that the post-course notification requirement is in effect, $67,896 in the second year, and $67,489 in the third year. The costs for these providers to take a digital photograph of each trainee, include it in the trainee's course completion certificate, and forward it to EPA were estimated to be $2 per trainee in the economic analysis for the final RRP rule (Ref. 9). The economic analysis also estimated that there would be 235,916 trainees in the first year that the accreditation and training requirements are in effect, 78,316 in the second year, and 77,995 in the third year. This results in an estimated cost for the digital photograph requirement of $471,832 in the first year, $156,632 in the second year, and $155,990 in the third year. The costs for accredited lead-based paint activities training providers to take digital photographs of successful trainees and submit them to EPA were not directly estimated, because EPA did not intend to impose this requirement. However, these costs can be calculated using the $2 per trainee figure along with the annual number of lead-based paint activities certification and re-certification applications received by EPA that was estimated for an economic analysis prepared for a separate rulemaking (Ref. 10). That economic analysis estimated that EPA would receive, on an annual basis, 1,534 certification applications and 626 re-certification applications. This results in an estimated annual cost for the digital photograph requirement for accredited lead-based paint activities training providers of $4,320. Because this proposed rule eliminates the digital photograph requirement for accredited lead-based paint activities training providers, this amount represents a cost savings.

B. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements that require additional approval by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. The information collection referenced in this proposed rule (i.e., the post-course notification requirement in 40 CFR 745.225) has already been approved by OMB under control number 2070–0155 (EPA ICR # 1715.10) (Ref. 8). EPA does not believe that this proposed rule has any impact on the existing burden estimate or collection description, such that additional approval by OMB is necessary.

Burden under PRA means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations codified in 40 CFR chapter I, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the APA or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined in accordance with section 601 of RFA as:

1. A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201.

2. A small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The impacts of the post-course notification requirement on small entities who become accredited to provide renovator or dust sampling technician training courses were specifically addressed and accounted for during the development of the final RRP rule. As provided for in section 605 of RFA, the post-course notification requirements being proposed are so closely related to the final RRP rule that EPA considers them and the analysis prepared and the other actions taken by EPA in connection with the final RRP rule to be one rule for the purposes of sections 603 and 604 of RFA. Accordingly, in order to avoid duplicative action, EPA is relying on the analysis EPA prepared for the final RRP rule as well as the other actions that EPA took in developing the final RRP rule to satisfy its obligations under RFA for this proposed rule. A description of the Agency's activities pursuant to RFA is found in the preamble to the final RRP rule (Ref. 1 at 21752). Specifically, pursuant to section 603 of RFA, EPA

prepared an initial regulatory flexibility analysis (IRFA) for the proposed RRP rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities on a range of issues, including training provider accreditation. As required by section 604 of RFA, the Agency also prepared a final regulatory flexibility analysis (FRFA) for the final RRP rule. The post-course notification requirements being proposed were included in costs analyzed in the IRFA and the FRFA for the final RRP rule. The FRFA also addressed the issues raised by public comments on the IRFA. As part of that analysis, EPA determined that including a digital photograph in the notification would not be an added cost to training providers because the cost would be recouped as part of the fee charged for the course. Thus, this requirement would not have a significant impact on any training providers. Accordingly, the impacts of the post-course notification requirements on small entities that become accredited to provide renovator or dust sampling technician training courses have been adequately addressed for purposes of RFA.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 of UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of UMRA allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Under Title II of UMRA, EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1 year. In addition, this proposed rule does not contain a significant Federal intergovernmental mandate as described by section 203 of UMRA nor does it contain any regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have ''federalism implications,'' because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this proposed rule. Nevertheless, in the spirit of the objectives of this Executive Order, and consistent with EPA policy to promote communications between the Agency and State and local governments, EPA consulted with representatives of State and local governments during the rulemaking process for the RRP rule. These consultations are as described in the preamble to the 2006 RRP proposed rule (Ref. 4).

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 9, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in the Executive Order. Thus, Executive Order 13175 does not apply to this proposed rule. Although Executive Order 13175 does not apply to this proposed rule, EPA consulted with Tribal officials and others by discussing potential renovation regulatory options at several national lead program meetings hosted by EPA and other interested Federal agencies.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because it is not an ''economically significant regulatory action'' as defined by Executive Order 12866. While the environmental health or safety risk addressed by the RRP rule does have a disproportionate effect on children, this proposed rule merely covers administrative requirements for accredited training providers and does not directly address environmental health or safety risks.

EPA has evaluated the environmental health or safety effects of renovation, repair, and painting projects on children. Various aspects of this evaluation are discussed in the preamble to the proposed RRP rule (Ref. 4). The primary purpose of the final RRP rule is to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in housing where children under age 6 reside and in housing or other buildings frequented by children under age 6. In the absence of the final RRP rule, adequate work practices are not likely to be employed during renovation, repair, and painting activities. EPA's analysis indicates that there will be approximately 1.4 million children under age 6 affected by the final RRP rule. These children are projected to receive considerable benefits due to the final RRP rule.

H. Executive Order 13211

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of

voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

While EPA has not assessed the potential impact of this proposed rule on minority and low-income populations, EPA did assess the potential impact of the final RRP rule as a whole. As a result of the final RRP rule assessment, contained in the economic analysis for the final RRP rule, EPA has determined that the final RRP rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population (Ref. 9).

List of Subjects in 40 CFR Part 745

Environmental protection, Child-occupied facility, Housing renovation, Lead, Lead-based paint, Renovation, Reporting and recordkeeping requirements.

Dated: April 15, 2009.

Lisa P. Jackson,

Administrator.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 745—[AMENDED]

1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

2. Section 745.225 is amended by revising paragraphs (c)(14) introductory text, (c)(14)(i), (c)(14)(ii)(D)(*6*), and (c)(14)(iii) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *

(c) * * *

(14) The training manager must provide notification following completion of renovator, dust sampling technician, or lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any renovator, dust sampling technician, or lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) * * *

(D) * * *

(*6*) For renovator or dust sampling technician courses only, a digital photograph of the student.

* * * * *

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following training courses can be accomplished by using either the sample form, entitled *Training Course Follow-up* or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1–800–424–LEAD (5323), or on the Internet at *http://www.epa.gov/lead*.

* * * * *

[FR Doc. E9–9227 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R8–ES–2008–0087; MO 92210 50083–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Tehachapi Slender Salamander (Batrachoseps stebbinsi) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Tehachapi slender salamander (*Batrachoseps stebbinsi*) as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing the Tehachapi slender salamander may be warranted. Therefore, with the publication of this notice, we are initiating a status review to determine if listing this species is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species. We will initiate a determination on critical habitat for this species, if and when we initiate a listing action.

DATES: To allow us adequate time to conduct this review, we request that information be received on or before June 22, 2009.

ADDRESSES: You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R8–ES–2008–0087; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all information received at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2943 Portola Road, Suite B,

Ventura, CA 93003; telephone 805–644–1766 extension 372; facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information concerning the status of the Tehachapi slender salamander (*Batrachoseps stebbinsi*). We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the Tehachapi slender salamander. We are seeking information regarding:

(1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

(3) Information on management programs for the conservation of the Tehachapi slender salamander.

(4) Factors that pose a threat to the Tehachapi slender salamander (those listed above, and otherwise) and the potential cumulative effects of these factors that may threaten or endanger the Tehachapi slender salamander.

If we determine that listing the Tehachapi slender salamander is warranted, it is our intent to propose critical habitat to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, with regard to specific areas within the geographical area occupied by the Tehachapi slender salamander, we also request data and information on what may constitute physical or biological features essential to the conservation of the species, where these features are currently found, and whether any of these features may require special management considerations or protection. In addition, we request data and information regarding whether there are specific areas outside the geographical area occupied by the species that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of the Act.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Based on the status review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. We will not consider submissions sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species.

On February 28, 2006, we received a petition, dated February 17, 2006, requesting that we list the Tehachapi slender salamander as a threatened or endangered species. The petition, submitted by Mr. Jeremy Nichols of Denver, Colorado, was clearly identified as a petition for a listing rule, and contained the name, signature, and address of the petitioning private citizen. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and potential causes of decline and active imminent threats.

In response to the petition, we sent a letter to the petitioner dated April 20, 2006, explaining that we would not be able to address his petition until fiscal year 2007. The reason for this delay was that responding to existing court orders and settlement agreements for other listing actions required nearly all of our listing funding. We also concluded in our April 20, 2006, letter that emergency listing of the Tehachapi slender salamander was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements, until funding recently became available to respond to this petition.

Species Information

Description and Taxonomy

The Tehachapi slender salamander (*Batrachoseps stebbinsi*) is a member of

the lungless salamander family, Plethodontidae. The genus *Batrachoseps* includes the slender salamanders that are distributed along the Pacific coast region between Oregon and northern Baja California, Mexico (Jockusch and Wake 2002, p. 362). Most members of the genus *Batrachoseps* are adapted to digging and burrowing underground. Species in this genus are relatively large, and tend to have elongated bodies and tails and reduced limbs compared to other lungless salamanders (CaliforniaHerps 2007, p. 2; Hansen and Wake 2005, p. 694; Jockusch and Wake 2002, p. 362). The Tehachapi slender salamander is considered to be closely related to the Kern Canyon slender salamander (*Batrachoseps simatus*) (Hansen and Stafford 1994, p. 252).

The Tehachapi slender salamander is sexually dimorphic. The average size of adult females is 2.24 inches (in) (57 millimeters (mm)), and adult males average 2.13 in (54 mm) snout to vent length (Hansen and Wake 2005, p. 694). The species has a broader head, longer legs, a shorter tail, and broader feet compared to other *Batrachoseps* species (Brame and Murray 1968, p. 20; CaliforniaHerps 2007). Both front and hind feet have four toes and are more webbed than other *Batrachoseps* species (Brame and Murray 1968, p. 18; Californiaherps 2007). The species lacks lungs and breathes through its smooth, thin skin (Hansen and Stafford 1994, p. 252; Californiaherps 2007, p. 2). The dorsal color may be dark red, brick red, or light or dark brown with light tan or black patches or blotches that may form a band-like pattern (Brame and Murray 1968, p. 18; Californiaherps 2007, p. 2).

The petition provided information indicating that the two known populations of the Tehachapi slender salamander may represent separate species, based on Hansen and Wake (2005, p. 694). Hansen and Wake (2005, p. 694) report high levels of differences in coloration, size, and genes between the Caliente Canyon population and the population found in the Tehachapi Mountains and suggest that these two populations represent different species. According to Hansen (2007, p. 1), the morphological and genetic differences between the two populations provide evidence that they have been separated for a long time and are likely not interbreeding. Due to the distance between the Tehachapi Mountain and the Caliente Creek Canyon populations (closest estimated distance is 13 miles (21 kilometers)) and Highway 58 dividing them, it is unlikely that any gene flow occurs between them. However, the petitioner clarifies that the petition applies to both populations.

Distribution

The Tehachapi slender salamander was first described in 1968. The species is found in two locations, both of which are in Kern County, California (Brame and Murray 1968, p. 20; Hansen and Wake 2005, pp. 693 and 695). The Caliente Canyon location, also referred to as the Caliente Creek area, is situated in the southern foothills of the Sierra Nevada Mountains and south of Kern Canyon. This area is known to contain the highest diversity of species of the *Batrachoseps* genus (Jockusch 1996, p. 79). The majority of the Caliente Canyon distribution occurs on private land. The second location is southwest of the Caliente Canyon area, in the Tehachapi Mountains. The Tehachapi Mountains connect the Southern Sierra Mountain Range with the Transverse Ranges and form the southeastern boundary of the Central Valley of California. The majority of the Tehachapi Mountain population occurs on Tejon Ranch.

The home range size of the Tehachapi slender salamander is unknown, although the species is believed to be sedentary (Jockusch 1996, p. 80; Hansen and Wake 2005, p. 694). Genetic studies of *Batrachoseps* species indicate that females have limited movement, suggesting that home ranges are likely to be small. Jockusch (1996, p. 80) observed genetic differences in black-bellied slender salamander (*Batrachoseps nigriventris*) populations over short geographic distances, indicating that the females have not moved between populations for millions of years.

The Caliente Canyon and Tehachapi Mountain populations are sympatric (co-occur) with the yellow-blotched ensatina salamander (*Ensatina eschscholtzii croceater*). The Tehachapi Mountain population also co-occurs with the black-bellied slender salamander in the Pastoria and Tejon Creek drainages (Hansen and Wake 2005, p. 694). Although the range of the Tehachapi slender salamander overlaps with that of the black-bellied slender salamander, the Tehachapi slender salamander appears to be more of a habitat specialist (Hansen and Wake 2005, p. 694).

The Service has limited information about the size and distribution of the Tehachapi Mountain and Caliente Canyon populations of the Tehachapi slender salamander; however, the Service does have documented occurrence information based on CNDDB data and published literature (CNDDB 2007, Jockusch and Wake 2002, p. 367, *in litt.* Flaxington 2007).

Habitat Characteristics

Although all the species in the genus *Batrachoseps* are strictly terrestrial during all life stages, they are dependent on moisture. Species in this genus are either restricted to moist microhabitats or are only seasonally active above the soil surface in arid regions (Jockusch and Wake 2002, p. 362). The Tehachapi slender salamander has been observed in mesic (moderately to constantly moist) microhabitats in areas that are moderately arid in southern California. Specifically, the species has been recorded only on north-facing slopes within canyons or ravines, beneath rocks, fallen logs, talus, or leaf litter in Caliente Canyon and the Tehachapi Mountains in Kern County (Hansen and Wake 2005, p. 694; CaliforniaHerps 2007, p. 2).

The Caliente Canyon population is found at lower elevations (1,660 to 2,999 feet (ft) (506 to 914 meters (m)) in Caliente Canyon (CNDDB 2007; Hansen and Wake 2005, p. 693) in limestone or granite talus and scattered rocks (Hansen and Wake 2005, p. 694). The Tehachapi Mountain population is found in the canyons of the Tehachapi Mountains, at higher elevations (3,350 ft to 4,600 ft (1,021 m to 1,402 m)) under wood, leaf litter, or talus (CaliforniaHerps 2007, p. 2; CNDDB 2007; Hansen and Wake 2005, p. 694). The species has been found in microhabitats containing areas of hardwood (*e.g.,* open canopies of sycamores (*Platanus racemosa*), California buckeyes (*Aesculus californica*), and live oaks (*Quercus* spp.)), conifers, and riparian vegetation (CNDDB 2007).

Life History

Tehachapi slender salamanders spend most of their time below ground. Individuals emerge during periods of precipitation. The surface activity period is February to March, but may extend to April or May in years with high precipitation (Hansen and Wake 2005, p. 694).

The breeding season is unknown; however, Hansen and Wake (2005, p. 694) suggest that the timing of mating and egg deposition may vary with climate pattern. The Tehachapi slender salamander breeds on land; however, breeding behavior and specific habitat requirements are unknown (Hansen and Wake 2005, p. 694). Although nests have not been found for the species, it is likely that eggs are deposited deep within the rock talus or litter (Hansen and Wake 2005, p. 694). Young hatch

fully formed (CaliforniaHerps 2007, p. 2).

Information on the diet of the species is sparse, as is information on its predators. The diet is comprised of small arthropods and other invertebrates (Brame and Murray 1968, p. 1; Hansen and Wake 2005, p. 694; Californiaherps 2007, p. 2). Possible predators include larger vertebrates, such as snakes.

A unique behavioral characteristic of *Batrachoseps* species is that they can coil their bodies much like a snake or a wire spring (Brame and Murray 1968, p. 1). In addition to coiling, defensive behaviors of the Tehachapi slender salamander include immobility, rapid crawling, and the ability to detach and regenerate the tail (Hansen and Wake 2005, p. 694; Californiaherps 2007, p. 2).

Current Status

The Tehachapi slender salamander was listed as threatened under the California Endangered Species Act (CESA) by the State of California on June 27, 1971 (California Natural Diversity Database 2007). The species has a global heritage ranking of G2 meaning that the species is considered globally imperiled (NatureServe 2006, p. 1). The species currently has no status under the Federal Endangered Species Act.

Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluate whether information concerning threats to the Tehachapi slender salamander, as presented in the petition and clarified by information available in our files at the time of the petition review, constitutes substantial scientific or commercial information such that listing under the Act may be warranted. Our evaluation of this information is presented below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The petitioner states that population declines and localized extirpation of the Tehachapi slender salamander may be occurring and that these may be due to the modification and destruction of salamander habitat by residential and commercial development, road construction, mining, domestic livestock grazing, and flood control projects.

Habitat destruction, degradation, and fragmentation have occurred in the past, and continue to occur within the range of the Tehachapi slender salamander, although we do not have information on the degree of these impacts at this time. Based on maps from the Tejon Ranch's Web site, the habitat range, reported sightings of the species (CNDDB 2007), and the research of Jockusch and Wake (2002, p. 367), general plans for future development on the ranch appear to overlap with 5 of the 9 known Tehachapi Mountain population occurrences (CNDDB 2007, Jockusch and Wake 2002, p. 367). That said, we do not have detailed information concerning where development footprints would occur. Tejon Ranch Corporation is currently developing a multispecies Habitat Conservation Plan that is proposed to include conservation of the Tehachapi slender salamander on Tejon Ranch lands. That document has not yet been completed, and we are continuing to work with Tejon Ranch Corporation on the development of this conservation strategy.

The petition also generally cites road construction and maintenance, mining, livestock grazing, and flood control projects as having a negative effect on the species and its habitat. Sources cited in the petition, in addition to the information provided in the CNDDB (2007) records, confirm the claims in the petition that habitat disturbances from roads and livestock grazing continue to occur in the Caliente Canyon area occupied by the species. Of the nine known occurrences of the Caliente Canyon population, three occur on Bureau of Land Management lands (BLM) where road construction and maintenance, livestock grazing, and mining activities are known to occur (CNDDB 2007; Kuritsubo pers. com. 2008). Additionally, Hansen and Wake (2005, p. 693) state that freeway and highway construction have adversely affected the Tehachapi slender salamander and its habitat. Based on current information in our files regarding Tejon Ranch Corporation's development plans, mining, livestock grazing, road construction and maintenance, and information regarding impacts to Tehachapi slender salamander habitat on BLM lands, we believe that the threats associated with Factor A documented in the petition continue to exist.

The data presented in the petition, as well as information in our files, relating to threats to the Tehachapi slender salamander and its habitat from road construction and maintenance, residential and commercial development, livestock grazing, and mining are credible and substantial. We find that the petition presents substantial information that the Tehachapi slender salamander may be threatened by the present or threatened destruction, modification, or curtailment of habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition did not provide information or list any threats to the Tehachapi slender salamander from overutilization for commercial, recreational, scientific, or educational purposes, nor do we have any information in our files regarding potential threats to the species due to this factor. As a result, we have determined that the petition does not present substantial information that the Tehachapi slender salamander may be threatened by overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

The petition did not provide information or list any threats to the Tehachapi slender salamander resulting from disease or predation, nor do we have any information in our files regarding potential threats to the species due to this factor. As a result, we have determined that the petition does not present substantial information that the Tehachapi slender salamander may be threatened by disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

The petition discussed existing regulatory mechanisms and their perceived inadequacy. The petitioner claimed that protections afforded the species under the CESA are limited because the State statute does not bind Federal agencies, such as the BLM, that manage lands containing Tehachapi slender salamander habitat and lacks explicit protections for habitat and recovery plan requirements to protect habitat and develop recovery plans. The petitioner also asserted that BLM's

designation of the Tehachapi slender salamander as a sensitive species provides no protection to the salamander.

The California Endangered Species Act (CESA) provides protections for the Tehachapi slender salamander both through the prohibition on take of state listed species without authorization and the requirement that any take authorized under the statute must be fully mitigated. However, the interpretation of ''take'' under state law may be narrower than under the ESA and may not fully address impacts to the species resulting from habitat loss or degradation. Moreover, while CESA offers protections for the Tehachapi slender salamander on state and privately owned land, it does not constrain Federal activities, particularly those occurring on Federal lands, where a substantial proportion of Tehachapi slender salamanders occur. Because the Tehachapi slender salamander is not protected under Federal law, Federal agencies are not required to consider the effects of their actions on the species or mitigate for those impacts.

Based on CNDDB data and land boundary confirmation from BLM, we believe that approximately one third of the known occurrences of the Caliente Canyon population of the Tehachapi slender salamander occurs on BLM land (Kuritsubo pers. com. 9/2/2008). BLM has identified the Tehachapi slender salamander as a sensitive species and surveys for the salamander prior to conducting activities that may affect the species in areas containing suitable habitat in accordance with agency policy directives. However, although BLM considers the presence of salamanders when planning and implementing management activities (Kuritsubo 2007, p. 1; Larson 2008, p. 1) it is not legally required to, and does not necessarily, avoid or mitigate the impacts of agency actions on the species.

The prohibition on ''take'' of the Tehachapi slender salamander under CESA may not fully address impacts to the species resulting from habitat loss on state and private lands, and neither CESA nor Federal law currently protects the salamander and its habitat from the impacts of Federal activities, particularly those that occur on Federal lands. Therefore, we believe that there are potential threats to the species with respect to this factor. We have determined that the petition presents substantial information that the Tehachapi slender salamander may be threatened due to the inadequacy of existing regulatory mechanisms. We hope to gain further information on the magnitude of the threats under Factor D during the status review.

E. Other Natural or Manmade Factors Affecting Continued Existence

The petitioner pointed out that the small size of the populations and localized occurrences of the species make it particularly vulnerable to environmental, genetic, and demographic stochastic events. In addition, the petitioner states that available scientific information indicates that climate change exemplified by hotter and drier summers and more extreme weather patterns threatens the Tehachapi slender salamander.

Stochastic Events

The petition did not include information on the size of the Caliente Creek and Tehachapi Mountain populations of the Tehachapi slender salamander, and we have no information on this in our files. Nor do we have information concerning the species' status to indicate whether the populations are increasing, decreasing, or stable. We note that the number of documented occurrences of the species since it was discovered is small. Based on the best scientific and commercial information that we have to date, the species does appear to be rare because of its limited distribution, few recorded individuals, and specific habitat requirements. The species may be vulnerable to stochastic events (*e.g.*, severe drought) because the range of the species is limited, the species is composed of only two populations that are separate from each other, there is an apparent lack of gene flow between the two populations, and the species occupies a restricted mesic habitat (Hansen and Wake 2005, p. 694; Hansen 2007, p. 1).

Therefore, we find the petition and information readily available to the Service presents substantial information to indicate stochastic events may be a threat to the species.

Climate Change

As cited in the petition, the Environmental Protection Agency (EPA) reported in 1997 (p. 1) that the earth's climate is predicted to change as a result of human activities that alter the atmosphere by causing a cumulative increase in greenhouse gases, particularly carbon dioxide, methane, nitrous oxide, and chlorofluorocarbons. In the report, the EPA (1997, p. 2) states that average temperatures and frequency of extreme rainfall in the United States are expected to rise. The EPA predicts that California may experience an increase of 5 degrees Fahrenheit (2.8 degrees Celsius) and an overall increase in precipitation of 20 to 30 percent by 2100. The report states that Fresno, California, approximately 162 mi (261 km) north of the Tehachapi Mountains, has experienced an average increase in temperature of 1.4 degrees Fahrenheit (0.8 degrees Celsius) over the past 100 years. Despite the trend observed for the United States in increased rainfall, Fresno has experienced a decrease in precipitation by up to 20 percent over the past century (EPA 1997, p. 2). The Intergovernmental Panel on Climate Change provides a more recent report that supports EPA's prediction on a global scale and adds that rising air and ocean temperature is unquestionable (IPCC 2007, p. 4).

We acknowledge that temperatures in southern California where the Tehachapi slender salamander occurs are likely to increase. We also agree that, if hotter and drier summers and more extreme weather patterns were to occur within its range, the Tehachapi slender salamander may be negatively affected. However, we believe that climate change models that are currently available are not yet capable of making meaningful predictions of climate change for specific, local areas such as the range of the Tehachapi slender salamander (Parmesan and Matthews 2005, p. 354). We do not have models to predict how the climate in the range of the Tehachapi slender salamander will change, and we do not know how any change may alter the range of the species. Although the petitioner provides information on climate change models and trends, we do not have information on past and future weather patterns within the specific range of the species to conclude that the species may be threatened by climate change.

Therefore, we find the information presented in the petition does not provide substantial information to indicate that climate change may be a threat to the species. However, we will continue to evaluate the potential affects of climate change on the species and its habitat during our status review.

Based on the information submitted in the petition, we have determined that substantial information has been presented that the Tehachapi slender salamander may be threatened due to other natural or manmade factors (stochastic events) affecting its continued existence (Factor E).

Finding

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or

commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents ''substantial scientific and commercial information,'' which is interpreted in our regulations as ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). We reviewed the petition, supporting information provided by the petitioner, and information in our files, and we evaluated that information to determine whether the sources cited support the claims made in the petition. The petition and supporting information identified numerous factors affecting the Tehachapi slender salamander including: road construction, residential and commercial development, mining, grazing, and flood control projects (Factor A); lack of regulatory mechanisms protecting the species and its habitat (Factor D); and climate change and environmental, genetic, and demographic stochastic events (Factor E). Of the factors listed above, we conclude that substantial information was provided that road construction, residential and commercial development, livestock grazing, and mining (Factor A) may threaten Tehachapi slender salamanders. We also found that the species may be threatened by the inadequacy of existing regulatory mechanisms (Factor D) and stochastic events (Factor E).

On the basis of information provided in the petition and other information readily available to us, we have determined that the petition presents substantial scientific or commercial information that listing the Tehachapi slender salamander may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. During the status review, we will consider threats to the Tehachapi slender salamander under all of the listing factors above. To ensure that the status review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

The petitioner also requested that critical habitat be designated for the Tehachapi slender salamander. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding following the status review of the species that listing the Tehachapi slender salamander is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

Significant Portion of the Species' Range

The petitioner seeks to list the entire Tehachapi slender salamander species. During our status review we will evaluate whether the best available scientific and commercial information supports listing the species throughout its entire range, or whether there may be a significant portion of the range that may be threatened or endangered. As a result, we will defer our analysis and determination of issues of significant portion of range to our status review and the 12-month finding.

A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, a positive 90-day finding does not mean that the 12-month finding also will be positive.

References Cited

A complete list of all references cited is available, upon request, from our Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Author

The primary author of this notice is the staff of the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section above).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 15, 2009.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–9220 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2009–0017; 92210–1117–0000–FY09–B4]

RIN 1018–AW47

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Hine's Emerald Dragonfly

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period, proposal to designate additional critical habitat unit.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our July 26, 2006, proposed rule on the designation of critical habitat for the Hine's emerald dragonfly *(Somatochlora hineana)* under the Endangered Species Act of 1973, as amended (Act). At this time the Service is reconsidering designating critical habitat on the Hiawatha National Forest in Michigan and the Mark Twain National Forest in Missouri as identified in the July 26, 2006, proposal. During the process of reconsidering the exclusion of these Federal lands, critical habitat designated by the September 5, 2007, final rule remains in place, while the Federal lands as described in the July 2006 proposed rule are considered as proposed critical habitat. Through this notice, the Service is also taking the opportunity pursuant to section 4(a)(3)(B) of the Act to propose a new unit on the Mark Twain National Forest that was not known to be occupied by the Hine's emerald dragonfly at the time of the September 5, 2007, final rule but has since been discovered. The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on the proposed rule, specifically regarding the new proposed unit and the exclusion of U.S. Forest Service lands from the 2007 final designation. Comments previously submitted on the proposed critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in the final decision.

DATES: We will consider comments received on or before June 22, 2009.

ADDRESSES: You may submit comments by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW47, Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: John Rogner, Field Supervisor, Chicago Illinois Ecological Services Field Office, 1250 S. Grove, Suite 103, Barrington, IL 60010, (telephone (847) 381–2253 extension 11; facsimile (847) 381–2285). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from the proposed rule will be as accurate and as effective as possible. Therefore, we request comments or suggestions on the proposed designation of critical habitat for the Hine's emerald dragonfly *(Somatochlora hineana).*

We particularly seek comments concerning:

(1) The reasons why we should or should not revise currently designated critical habitat for the Hine's emerald dragonfly by including 13,295 acres (ac) (5,380 hectares (ha)) on the Hiawatha National Forest in Michigan and the Mark Twain National Forest in Missouri in the final designation;

(2) Specific information on the amount and distribution of Hine's emerald dragonfly habitat on the Hiawatha National Forest in Michigan or the Mark Twain National Forest in Missouri;

(3) Any foreseeable economic, national security, or other potential impacts resulting from the proposed critical habitat revision, and in particular, any impacts on small entities; and

(4) Information on the degree to which species-specific management plans have been implemented on U.S. Forest Service lands, and the effectiveness of any management actions implemented in reducing threats facing the Hine's emerald dragonfly and its habitat or in improving its population status.

You may submit your comments and materials concerning the proposed revised designation of critical habitat for the Hine's emerald dragonfly by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you provide personal identifying information in addition to the required items specified in the previous paragraph, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed designation of critical habitat for the Hine's emerald dragonfly, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the Service's Chicago Illinois Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

On September 5, 2007, the Service published a final rule in the **Federal Register** (72 FR 51102) designating 13,221 ac (5,350 ha) as critical habitat for the Hine's emerald dragonfly in Illinois, Michigan, Missouri, and Wisconsin. In that 2007 final rule, the Service excluded U.S. Forest Service land in Michigan and Missouri from the designation, under section 4(b)(2) of the Act. The 14 units that make up the U.S. Forest Service lands were fully described in the July 26, 2006, proposed rule to designate critical habitat for the Hine's emerald dragonfly (71 FR 42442). The U.S. Forest Service lands make up all or portions of Michigan units 1 and 2 and Missouri units 1, 2, 4, 5, 7, 8, 11, 21, and 23 through 26. In the 2006 proposed rule, we explained that we were considering those areas for exclusion from the final designation, and subsequently excluded them from the 2007 final rule. We are now reconsidering those exclusions.

On March 10, 2008, six parties (Northwoods Wilderness Recovery, The Michigan Nature Association, Door County Environmental Council, The Habitat Education Center, Natural Resources Defense Council, and The Center for Biological Diversity) filed a complaint against the Department of the Interior and the Service (*Northwoods Wilderness Recovery et al.* v. *Dirk Kempthorne* 1:08–CV–01407) challenging the exclusion of U.S. Forest Service lands from the 2007 final designation of critical habitat for the dragonfly. On February 12, 2009, the U.S. District Court for the Northern District of Illinois approved a settlement agreement in which the Service agreed to a remand without vacatur of the critical habitat designation in order to reconsider the Federal exclusions from the designation of critical habitat for the Hine's emerald dragonfly. Per that settlement, we agreed to publish this notice reopening the comment period on the July 26, 2006, proposed critical habitat and that, upon publication of this notice, the July 26, 2006, proposed critical habitat designation of the U.S. Forest Service lands in Michigan and Missouri would be reinstated as proposed. Furthermore, until the effective date of the revised final critical habitat determination, the existing designation of critical habitat for the Hine's emerald dragonfly will remain in place and effective. The Service will submit a revised final critical habitat designation for the Hine's emerald dragonfly to the **Federal Register** by April 15, 2010.

We are reopening the comment period to allow all interested parties to submit comments and materials on the potential inclusion of land on the Hiawatha National Forest in Michigan and the Mark Twain National Forest in Missouri in the final designation of critical habitat for the Hine's emerald dragonfly. Through this notice, we are also taking the opportunity to revise our 2006 proposed rule pursuant to section 4(a)(3)(B) of the Act by proposing an additional unit, Missouri Unit 27, on the Mark Twain National Forest in Missouri that was not known to be occupied by the Hine's emerald dragonfly at the time of the 2007 final rule, but has since been discovered through survey efforts. Previously submitted comments for this proposed rule need not be resubmitted. Those comments have been incorporated into the public record and will be fully considered in our final determination.

Critical Habitat Units on U.S. Forest Service Lands as Described in the July 26, 2006, Proposal (71 FR 42442)

The units described below are areas that were not documented to be occupied at the time of listing but are currently occupied and are considered essential to the conservation of the species due to the limited numbers and small sizes of extant Hine's emerald dragonfly populations. Recovery criteria established in the recovery plan for the species (Service 2001, pp. 31–32) call for a minimum of three populations,

each containing at least three subpopulations, in each of two recovery units. Within each subpopulation there should be at least two breeding areas, each fed by separate seeps and springs. Management and protection of all known occupied areas are necessary to meet these goals.

Michigan Unit 1—Mackinac County, Michigan

Michigan Unit 1 contains 9,452 ac (3,825 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. All primary constituent elements (PCEs) for the Hine's emerald dragonfly are present in this unit. The unit contains at least four breeding areas for Hine's emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. Adults have also been observed foraging at multiple locations within this unit. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for Hine's emerald dragonfly breeding and foraging. The habitat is mainly spring-fed rich cedar swamp or northern fen. The breeding areas are open with little woody vegetation or are sparsely vegetated with northern white cedar *(Thuja occidentalis).* Small shallow pools and seeps are common. Crayfish burrows are found in breeding areas. Corridors between the breeding areas make it likely that adult dragonflies could travel or forage between the breeding sites. The majority of this unit is owned by the Hiawatha National Forest. Threats, including nonnative species invasion, woody encroachment, off-road vehicle use, logging, and utility and road right-of-way maintenance, have the potential to impact the habitat. Small portions of the unit are owned by the State of Michigan and private individuals. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Michigan Unit 2—Mackinac County, Michigan

Michigan Unit 2 consists of 3,511 ac (1,421 ha) in Mackinac County in the Upper Peninsula of Michigan. This area was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly are present in this unit. The unit contains at least four breeding areas for Hine's emerald dragonfly, with female oviposition or male territorial patrols observed at all breeding sites. The unit contains a mixture of fen, forested wetland, forested dune and swale, and upland communities that are important for Hine's emerald dragonfly breeding and foraging. The breeding habitat varies in the unit. Most breeding areas are northern fen communities with sparse, woody vegetation (northern white cedar) that are probably spring-fed with seeps and marl pools present. One site is a spring-fed marl fen with sedge-dominated seeps and marl pools. Crayfish burrows are found in breeding areas. Corridors between the breeding areas, including a large forested dune and swale complex, make it likely that adult dragonflies could travel or forage between the breeding sites. The majority of this unit is owned by the Hiawatha National Forest and is designated as a Wilderness Area. Threats, including nonnative species invasion, woody encroachment, and off-road vehicle use, have the potential to impact the habitat. About one percent of the unit is owned by private individuals. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 1—Crawford County, Missouri

Missouri Unit 1 consists of 90 ac (36 ha) in Crawford County, Missouri, and is under U.S. Forest Service ownership. This fen is in close proximity to the village of Billard and is associated with James Creek, west of Billard. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are present in this unit. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open pasture provide foraging habitat that is surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 2—Dent County, Missouri

Missouri Unit 2 is comprised of 34 ac (14 ha) in Dent County, Missouri, and is under U.S. Forest Service and private ownership. The U.S. Forest Service portion of this unit comprises 15 ac (6 ha), and is the only portion of the unit we are reconsidering for inclusion. It is located north of the village of Howes Mill and in proximity to County Road (CR) 438. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are present in this unit—the U.S. Forest Service portion of the unit provides foraging areas for the species. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and an adjacent open old field provide foraging habitat and are surrounded by contiguous, closed-canopy forest. Adults have been documented from the U.S. Forest Service portion of this locality. Threats identified for this unit include all-terrain vehicles, feral hogs, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. Only the exclusion of the Forest Service portion of this unit from the 2007 final designation is being reconsidered.

Missouri Unit 4—Dent County, Missouri

Missouri Unit 4 is owned and managed by the U.S. Forest Service, and consists of 14 ac (6 ha) in Dent County, Missouri. This fen is associated with a tributary of Watery Fork Creek in Fortune Hollow and is located east of the juncture of Highway 72 and Route MM. This area was not known to be occupied at the time of listing. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen and adjacent old fields provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 5—Iron County, Missouri

Missouri Unit 5 is comprised of 50 ac (20 ha) in Iron County, Missouri, and is under U.S. Forest Service ownership. This fen is adjacent to Neals Creek and Neals Creek Road, southeast of Bixby. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen consists of surface flow and is fed, in part, by a wooded slope north of Neals Creek Road. This small but high-quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Both adults and larvae have been documented from this unit. Threats identified for this unit include all-terrain vehicles, feral hogs, road construction and maintenance, beaver dams, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 7—Phelps County, Missouri

Missouri Unit 7 consists of 33 ac (13 ha) in Phelps County, Missouri, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. This fen is associated with Kaintuck Hollow and a tributary of Mill Creek, and is located south-southwest of the town of Newburg. This high-quality fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Despite repeated sampling for adults and larvae, only one exuviae (shed larval exterior) has been documented from this unit. Threats identified for this unit include all-terrain vehicles, feral hogs, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 8—Reynolds County, Missouri

Missouri Unit 8 is part of the Bee Fork complex. Bee Fork West, the U.S. Forest Service portion of the complex, consists of 4 ac (2 ha) in Reynolds County, Missouri. This locality is part of a series of three fens adjacent to Bee Fork Creek, extending from east-southeast of Bunker east to near the bridge on Route TT over Bee Fork Creek. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided within the unit. The fen provides surface flow and is fed, in part, by a small spring that originates from a wooded ravine just north of the county road bordering the northernmost fen in the complex. The unit, in conjunction with the rest of the complex, is one of the highest quality representative examples of an Ozark fen in the State. The fen provides larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Both adults and larvae have been documented from this unit. The entire complex is an extremely important focal area for conservation actions that benefit Hine's emerald dragonfly. It is likely that the species uses Bee Fork Creek as a connective corridor between adjacent components of the complex. Threats identified for this unit include feral hogs, ecological succession, utility maintenance, application of herbicides, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit (unit 8) from the 2007 final designation is being reconsidered—however the exclusion of the rest of the Bee Fork complex (units 9 and 10 from the 2006 proposal) is not being reconsidered.

Missouri Unit 11—Reynolds County, Missouri

Missouri Unit 11 is under private and U.S. Forest Service ownership and consists of 113 ac (46 ha) in Reynolds County, Missouri. The U.S. Forest Service portion of this unit comprises 22 ac (9 ha), and is the only portion of the unit we are reconsidering for inclusion. The unit is a series of small fen openings adjacent to a tributary of Bee Fork Creek, and is located east of the intersection of Route TT and Highway 72, extending north to the Bee Fork Church on County Road 854. This area was not known to be occupied at the time of listing. This unit in its entirety is one of the highest quality representative examples of an Ozark fen in the State and incorporates much of the valley within Grasshopper Hollow. All PCEs for Hine's emerald dragonfly are provided in this unit—the U.S. Forest Service portion of the unit provides foraging areas for the species. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen, adjacent fields, and open path provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. Adults have been documented from the U.S. Forest Service portion of this unit. Threats identified for this unit include feral hogs, beaver dams, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. Only the exclusion of the Forest Service portion of this unit from the 2007 final designation is being reconsidered.

Missouri Unit 21—Ripley County, Missouri

Missouri Unit 21 is a very small fen and consists of 6 ac (2 ha) in Ripley County, Missouri. It is under U.S. Forest Service ownership and is located west of Doniphan. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent open, maintained county road provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, all-terrain vehicles, equestrian use, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Units 23 and 24—Washington County, Missouri

Missouri Units 23 and 24 comprise the Towns Branch and Welker Fen complex and consist of 75 ac (31 ha) near the town of Palmer in Washington County, Missouri. The complex consists

of two fens that are under U.S. Forest Service ownership. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. These fens provide surface flow and include larval habitat and adjacent cover for resting and predator avoidance. The fens and adjacent open, maintained county roads provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this complex. Threats identified for this unit include feral hogs, all-terrain vehicles, road construction and maintenance, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 25—Washington County, Missouri

Missouri Unit 25 consists of 33 ac (13 ha) and is located northwest of the town of Palmer in Washington County, Missouri. The fen is associated with Snapps Branch, a tributary of Hazel Creek, and is owned and managed by the U.S. Forest Service. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow, and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent old logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this locality. Threats identified for this unit include feral hogs, all-terrain vehicles, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Missouri Unit 26—Wayne County, Missouri

Missouri Unit 26 is owned and managed by the U.S. Forest Service and consists of 5 ac (2 ha). This extremely small fen is located near Williamsville and is associated with Brushy Creek in Wayne County, Missouri. This area was not known to be occupied at the time of listing. All PCEs for Hine's emerald dragonfly are provided in this unit. The fen provides surface flow and includes larval habitat and adjacent cover for resting and predator avoidance. The fen and adjacent logging road with open canopy provide habitat for foraging and are surrounded by contiguous, closed-canopy forest. To date, only larvae have been documented from this unit. Threats identified for this unit include feral hogs, all-terrain vehicles, and habitat fragmentation. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. The exclusion of this entire unit from the 2007 final designation is being reconsidered.

Additional Proposed Critical Habitat Unit

Through this notice the Service is also taking the opportunity pursuant to section 4(a)(3)(B) of the Act to propose a new unit on the Mark Twain National Forest that was not known to be occupied by the Hine's emerald dragonfly at the time of the September 5, 2007, final rule, but has since been discovered to be occupied. Based on our evaluation of research results from recent fieldwork, we have determined that a newly discovered site in Washington County, Missouri, is essential to the conservation of Hine's emerald dragonfly. The collection of a final instar male larva from this site provides evidence of breeding at this locality. The additional proposed critical habitat unit, Missouri Unit 27, is described below.

Missouri Unit 27—Crawford County, Missouri

Missouri Unit 27 is owned and managed by the U.S. Forest Service and is approximately 3.25 miles (5.23 kilometers) west and southwest of Brazil, Missouri, or about 0.25 mile (0.40 kilometer) southeast of Center Post Church in Crawford County, Missouri. The unit consists of approximately 3 ac (1.21 ha). This unit was not known to be occupied at the time of listing. All PCEs for the Hine's emerald dragonfly identified in the July 26, 2006, proposed rule (71 FR 42442) are present in this unit. Adult Hine's emerald dragonflies have been observed at the site and successful breeding was confirmed (Vogt 2008, p. 10). Surface water consists primarily of seepage pools and small rivulets. Parts of the fen include an open field with scattered shrubs and eastern red cedar *(Juniperus virginiana)* that is likely used as a foraging area by adults. This unit is essential to the conservation of the species because it provides for the redundancy and resilience of populations in this portion of the species' range, where habitat is under threat from multiple factors. Known threats to the PCEs that may require special management or protections include invasion of undesirable plant species, feral hogs, all-terrain vehicles, and equestrian use.

Required Determinations

In this notice, we are affirming the information contained in our July 26, 2006, proposed rule (71 FR 42442), concerning Executive Order (E.O.) 13132 (Federalism), and E.O. 12988 (Civil Justice Reform); the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). We also affirm the determinations made in our March 20, 2007, revised proposed rule and announcement of the availability of the draft economic analysis (72 FR 13061), regarding E.O. 12866 (Regulatory Planning and Review) and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*); E.O. 13211 (Energy, Supply, Distribution, and Use); E.O. 12630 (Takings); and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Please refer to the proposed rule and draft economic analysis of the proposed critical habitat designation for detailed discussions of required determinations and potential economic impacts. The economic analysis prepared for the original rulemaking included an analysis for Forest Service lands (the Mark Twain National Forest) in Missouri. The newly proposed additional unit also occurs on these lands. It is a relatively small unit and would be subject to the same issues previously analyzed. We will discuss the economics related to this additional unit in our final decision document on this action. If we adopt a final rule for this action, we will confirm our required determinations in that final rule to designate critical habitat for the Hine's emerald dragonfly.

References

Vogt, T. 2008. Larval Sampling, Monitoring, and Status Survey for the Hine's Emerald Dragonfly *(Somatochlora hineana)* in Missouri, 2007–2008. Report to the U.S. Forest Service and U.S. Fish and Wildlife Service. 10p.

Authors

The primary authors of this document are Laura Ragan and Kristopher Lah of the Division of Ecological Services, Midwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the Hine's emerald dragonfly *(Somatochlora hineana)* in § 17.95(i), which was first proposed to be added on July 26, 2006, at 71 FR 42442 and then amended on March 20, 2007, at 72 FR 13061, is proposed to be further amended as follows:

a. By redesignating paragraphs (i)(24) through (i)(30) as paragraphs (i)(25) through (i)(31); and

b. Adding a new paragraph (i)(24) to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

* * * * *

Hine's emerald dragonfly *(Somatochlora hineana)*

* * * * *

(24) Missouri Unit 27, Washington County, Missouri.

(i) Missouri Unit 27: Washington County. Located on the Courtois quadrangle in Township 36 north, Range 2 west, section 14, northeast ¼, southwest ¼, northwest ¼.

(ii) *Note:* Map of Missouri proposed critical habitat Unit 27 follows:

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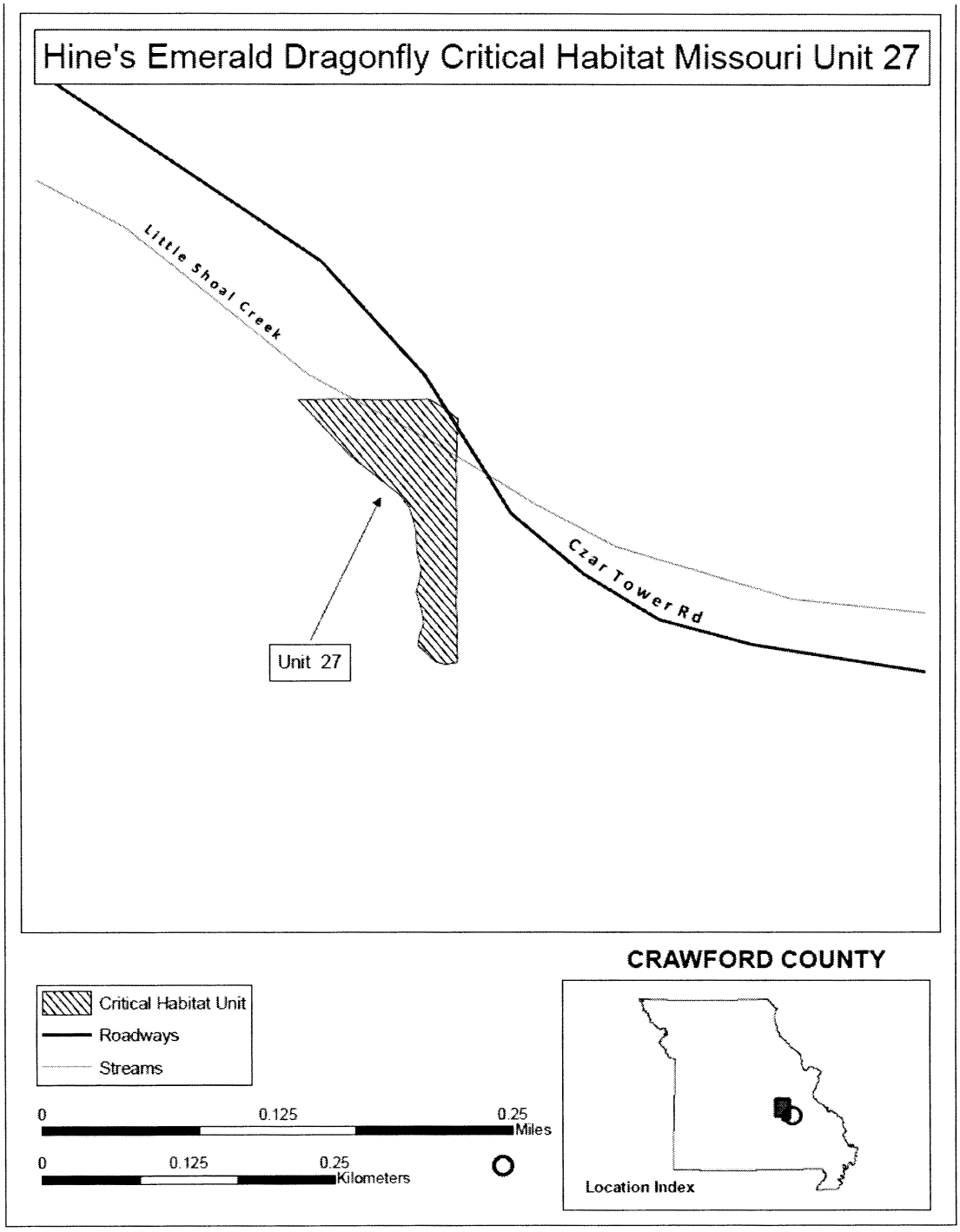

* * * * *

Dated: April 15, 2009.

Will Shafroth,

Acting Assistant Secretary, Department of the Interior.

[FR Doc. E9–9164 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–55–C

Notices

Federal Register
Vol. 74, No. 76
Wednesday, April 22, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Intermountain Region, Boise, Payette, and Sawtooth National Forests; ID; Amendment to the 2003 Land and Resource Management Plans: Wildlife Conservation Strategy (Forested Biological Community)

AGENCY: Forest Service, USDA.

ACTION: Second correction of notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: On December 8, 2008, the Forest Service corrected a notice of intent (NOI) to prepare one EIS to disclose the environmental effects of proposed nonsignificant amendments to the three Southwest Idaho Ecogroup (SWIE) 2003 Land and Resource Management Plans (Forest Plans). The December 8, 2008, NOI corrected a September 14, 2007 NOI, in part to reflect a delay of more than a year in filing the draft EIS. The December 8, 2008 NOI is now being corrected to reflect that three EISs will be prepared (one for each Forest) instead of one EIS addressing all three Forests.

DATES: The draft EISs for the three Forests are expected to be available in the fall of 2009 for a 45-day public comment period. The final EISs and three Records of Decision (RODs), one for each Forest Plan, are expected to be completed by winter 2009.

FOR FURTHER INFORMATION CONTACT: Randall Hayman, Forest Planner, Boise National Forest; 1249 South Vinnell Way, Suite 200, Boise, Idaho 83709; telephone 208–373–4100.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The three Forests have decided to prepare three separate EISs to disclose the environmental effects of proposed nonsignificant amendments to each Forest Plan. The proposed Forest Plan amendments would add and/or modify existing management direction as needed to implement a Forest Plan-level, wildlife conservation strategy (WCS) for the forested biological community for the Boise, Payette, and Sawtooth National Forests, respectively. The Forests decided to prepare three separate EISs to reduce the complexity arising from one single EIS addressing a wide diversity of terrestrial wildlife species and forested habitats across approximately 6.6 million acres, and to reflect each Forest's reliance on a Forest Plan and ROD specific to that Forest. Each of the three EISs will describe cumulative effects to identified species, using analysis areas appropriate for and specific to these species. Additional information about the proposed amendments, including the purpose and need and proposed action. can be found in the September 14, 2007, NOI (**Federal Register**, Vol 72, No. 178, pp. 52540–52542) and the December 8, 2008, NOI (**Federal Register**, Vol 73, No. 236, pp. 74455–74456).

Information about and status updates of the amendment process will continue to be posted on the Web site, *http://fs.usda.gov/boise* (click on ''WildIife Conservation Strategy'').

Responsible Officials: The Responsible Officials are the three Forest Supervisors for the Boise, Payette, and Sawtooth NFs.

Nature of Decision To Be Made: Each Responsible Official will review the final EIS for her respective Forest and determine if the 2003 Plan for her Forest should be amended and/or modified, or if the current Forest Plan should remain unchanged.

Dated: April 14, 2009.

Cecilia R. Seesholtz,

Forest Supervisor, Boise National Forest.

[FR Doc. E9–9093 Filed 4–21–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: On February 5, 2009, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2007, through April 30, 2008. We gave interested parties an opportunity to comment on the preliminary results. We received no comments on our preliminary results. The final weighted-average dumping margin for Far Eastern Textiles Ltd. is listed below in the ''Final Results of Review'' section of this notice.

DATES: *Effective Date:* April 22, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–0410.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. *See Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 6136 (February 5, 2009) (*Preliminary Results*). We invited interested parties to comment on the *Preliminary Results.* We did not receive comments from any interested parties and we did not make any changes to the margin calculations for the final results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the order is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Final Results of Review

As a result of our review, we determine that a weighted-average dumping margin of 1.97 percent exists for Far Eastern Textiles Ltd. for the period May 1, 2007, through April 30, 2008.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. Although Far Eastern Textiles Ltd. indicated that it was not the importer of record for any of its sales to the United States during the period of review, it reported the names of the importers of record for all of its U.S. sales. Because Far Eastern Textiles Ltd. also reported the entered value for all of its U.S. sales, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins we calculated for all U.S. sales to each importer and dividing this amount by the total entered value of those sales.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Clarification*). This clarification will apply to entries of subject merchandise during the period of review produced by Far Eastern Textiles Ltd. for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Assessment Clarification.*

The Department intends to issue assessment instructions directly to CBP 15 days after publication of these final results of review.

Cash-Deposit Requirements

The following antidumping duty deposit requirements are effective for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for Far Eastern Textiles Ltd. is 1.97 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or previous reviews, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 7.31 percent, the all-others rate established in *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000). These cash-deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–9246 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–881]

Continuation of Antidumping Duty Order on Malleable Cast Iron Pipe Fittings From the People's Republic of China

AGENCY: International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 22, 2009.

SUMMARY: As a result of the determinations by the Department of Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on malleable cast iron pipe fittings (''malleable pipe fittings'') from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Sergio Balbontín, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or (202) 482–6478, respectively.

SUPPLEMENTARY INFORMATION: On November 3, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on malleable pipe fittings from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Review*, 73 FR 65292 (November 3, 2008).

As a result of its review, the Department determined that revocation of the antidumping duty order on malleable pipe fittings from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 10239 (March 10, 2009).

On April 9, 2009, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on malleable pipe fittings from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable future. *See Malleable Iron Pipe Fittings from China* (Inv. No. 731–TA–1021 (Review)), USITC Publication 4069 (April 2009) and 74 FR 16233 (April 9, 2009).

Scope of the Order

The products covered by the antidumping duty order are certain malleable iron pipe fittings, cast, other than grooved fittings, from the PRC. The merchandise is classified under item numbers 7307.19.90.30, 7307.19.90.60 and 7307.19.90.80 of the Harmonized Tariff Schedule (HTSUS). Excluded from the scope of the order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts. These products range in diameter from ½ inch to 2 inches and are carried only in galvanized finish. Although HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this proceeding is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on malleable pipe fittings from the PRC. United States Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: April 16, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–9242 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 12, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–009. Applicant: University of North Carolina at Charlotte, 9201 University City Blvd., Charlotte, NC 28223. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used to study materials such as metals, semiconductors, polymers, composites, ceramic, biological material and nanostructured materials. Justification for Duty–Free Entry: No U.S.-made instruments of same general category. Application accepted by Commissioner of Customs: March 30, 2009.

Docket Number: 09–010. Applicant: Indiana University, 400 East Seventh St., Room 403, Bloomington, IN 47408. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used to visualize materials that have been fabricated or synthesized and have feature sizes that cannot be seen by eye or an optical microscope. Justification for Duty–Free Entry: No U.S.-made instruments of same general category. Application accepted by Commissioner of Customs: March 30, 2009.

Docket Number: 09–011. Applicant: Carnegie Mellon University, 5000 Forbes Ave., Pittsburgh, PA 15213. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used study atomic spacing on orientations in crystalline materials, which requires a microscope capable of resolution below .1nm. Justification for Duty–Free Entry: No comparable instrument manufactured domestically. Application accepted by Commissioner of Customs: March 30, 2009.

Docket Number: 09–012. Applicant: Ohio State University Medical Center, M018 Starling Loving Hall, 320 W. 10th Ave., Columbus, OH 43210. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: The instrument will be used study biological materials such as tissue cultures, animal organs and human biopsy specimens. Experiments may include routine ultrastructual examination, immune–gold immunocytochemistry and negative staining of particulate matter. Justification for Duty–Free Entry: No comparable instrument manufactured domestically. Application accepted by Commissioner of Customs: April 7, 2009.

Dated: April 16, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–9286 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

National Institutes of Standards and Technology

Notice of Consolidated Decision on Application for Duty–Free Entry of Electron Microscope

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–008. Applicant: National Institutes of Standards and Technology, Gaithersburg, MD 20899. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 16835, April 13, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope. We know of no electron microscope, or any other instrument suited to this purpose, which is being manufactured in the United States at the time of order of this instrument.

Dated: April 16, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–9235 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, as amended by Pub. L. 106-36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before May 12, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09-007. Applicant: University of Utah, Consortium for Astro-Particle Research, 215 South State Street, Suite 200, Salt Lake City, UT 84111. Instrument: Electron Light Source (ELS) accelerator. Manufacturer: University of Tokyo, Japan. Intended Use: The instrument will be used as a component of a large ground Telescope Array, which will allow the scientists to calibrate the telescopes by generating a particle beam that accurately simulates a cosmic ray shower. Justification for Duty-Free Entry: No instruments of the same general category as the foreign instrument begin manufactured in the United States. Application accepted by Commissioner of Customs: March 10, 2009.

Dated: April 16, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–9230 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Applicants for the Appointment to the United States-Brazil CEO Forum

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In March 2007, the Governments of the United States and Brazil established the U.S.-Brazil CEO Forum. This notice announces membership opportunities for appointment as American representatives to the U.S. Section of the Forum. The current U.S. Section term will expire on May 18, 2009.

DATES: Applications should be received no later than May 29, 2009.

ADDRESSES: Please send requests for consideration to Lorrie Fussell, Brazil Desk Officer, Office of South America, U.S. Department of Commerce, either by e-mail at *lorrie.fussell@ita.doc.gov* or by mail to U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 3203, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lorrie Fussell, Brazil Desk Officer, Office of South America, U.S. Department of Commerce, telephone: (202) 482–4157.

SUPPLEMENTARY INFORMATION: The U.S. Secretary of Commerce and the Deputy Assistant to the President and Deputy National Security Advisor for International Economic Affairs, together with the Planalto Casa Civil Minister (Presidential Chief of Staff) and the Brazilian Minister of Development, Industry and Foreign Trade, co-chair the U.S.-Brazil CEO Forum, pursuant to the Terms of Reference signed in March 2007, by the U.S. and Brazilian governments, which set forth the objectives and structure of the Forum. The Terms of Reference may be viewed at: *http://trade.gov/press/press_releases/2007/brazilceo_02.asp.* The Forum, consisting of both private and public-sector members, brings together leaders of the respective business communities of the United States and Brazil to discuss issues of mutual interest, particularly ways to strengthen the economic and commercial ties between the two countries. The Forum consists of the U.S. and Brazilian co-chairs and a Committee comprised of private sector members. The Committee will be composed of two Sections each consisting of eight to ten members from the private sector, representing the views and interests of the private sector business community in the United States and Brazil. Each government will appoint the members to its respective Section. The Committee will provide recommendations to the two governments that reflect private sector views, needs and concerns regarding creating an economic environment in which their respective private sectors can partner, thrive and enhance bilateral commercial ties to expand trade between the United States and Brazil.

Candidates are currently sought for membership on the U.S. Section of the Forum. Each candidate must be Chief Executive Officer or President (or comparable level of responsibility) of a U.S. owned or controlled company that is incorporated in and has its main headquarters located in the United States and currently doing business in Brazil and the United States. Each candidate also must be a U.S. citizen or otherwise legally authorized to work in the United States and able to travel to Brazil and locations in the United States to attend official Forum meetings as well as independent U.S. Section and Committee meetings. In addition, the

candidate may not be a registered foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Evaluation of applications for membership in the U.S. Section by eligible individuals will be based on the following criteria:

—A demonstrated commitment by the individual's company to the Brazilian market either through exports or investment.

—A demonstrated strong interest in Brazil and its economic development.

—The ability to offer a broad perspective and business experience to the discussions.

—The ability to address cross-cutting issues that affect the entire business community.

—The ability to initiate and be responsible for activities in which the Forum will be active.

Members will be selected on the basis of who will best carry out the objectives of the Forum as stated in the Terms of Reference establishing the U.S.-Brazil CEO Forum. The U.S. Section of the Forum should also include members that represent a diversity of business sectors and geographic locations. To the extent possible, Section members also should represent a cross-section of small, medium, and large firms.

U.S. members will receive no compensation for their participation in Forum related activities. Individual members will be responsible for all travel and related expenses associated with their participation in the Forum, including attendance at Committee and Section meetings. Only appointed members may participate in official Forum meetings; substitutes and alternates will not be designated. U.S. members will normally serve for two-year terms, but may be reappointed.

To be considered for membership, please submit the following information as instructed in the **ADDRESSES** and **DATES** captions above: Name(s) and title(s) of the individual(s) requesting consideration; name and address of company's headquarters; location for incorporation; size of the company; size of company's export trade, investment, and nature of operations or interest in Brazil; and a brief statement of why the candidate should be considered, including information about the candidate's ability to initiate and be responsible for activities in which the Forum will be active. Applications will be considered as they are received. All candidates will be notified of whether they have been selected.

Dated: April 15, 2009.

Anne Driscoll,

Director for the Office of South America.

[FR Doc. E9–9292 Filed 4–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2009–0016]

Grant of Interim Extension of the Term of U.S. Patent No. 4,650,787; Sanvar®

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension under 35 U.S.C. 156(d)(5) for a fifth one-year interim extension of the term of U.S. Patent No. 4,650,787.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On March 19, 2009, Debiovision Inc., the exclusive agent of Debiopharm S.A. and Debio Recherche Pharmaceutique S.A., who is the exclusive licensee of the Administrators of the Tulane Educational Fund of New Orleans, Louisiana, the patent owner, timely filed an application under 35 U.S.C. 156(d)(5) for a fifth interim extension of the term of U.S. Patent No. 4,650,787. The patent claims the human drug product Sanvar® (vapreotide acetate). The application indicates that a New Drug Application for the human drug product Sanvar® (vapreotide acetate) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional one year as required by 35 U.S.C. 156(d)(5)(B) and 35 U.S.C. 156(d)(5)(C). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (April 25, 2009), a fifth interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

A fifth interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,650,787 is granted for a period of one year from the extended expiration date of the patent, i.e., until April 25, 2010.

April 15, 2009.

John J. Doll,

Acting Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–9145 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO70

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: These authorizations are effective from May 15, 2009 through May 14, 2010.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the

contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to Kerr McGee Oil and Gas Corporation, Noble Energy, Inc., and Nippon Oil Exploration U.S.A. Limited. Issuance of the LOAs is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: April 14, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–9000 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO80

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year Letters of Authorization (LOA) to ExxonMobil Production Company to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: This authorization is effective from May 1, 2009 through April 30, 2010.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see FOR FURTHER INFORMATION CONTACT), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Sections 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-

headed whales (*Peponocephala electra*), pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to ExxonMobil Production Company. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: April 16, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–9264 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO20

Endangered Species; File No. 13544 and No. 13573

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that Jeffrey Schmid, Conservancy of Southwest Florida, 1450 Merrihue Drive, Naples, FL 34102 has been issued a permit to take Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), and green (*Chelonia mydas*) sea turtles for purposes of scientific research. Michael Salmon, Florida Atlantic University, 777 Glades Road, Boca Raton, FL 33431–0991 has been issued a permit to take green sea turtles for purposes of scientific research.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521.

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 24, 2008, notice was published in the **Federal Register** (73 FR 43211) that a request for a scientific research permit to take sea turtles had been submitted by Dr. Schmid. On September 3, 2008, notice was published in the **Federal Register** (73 FR 51446) that a request for a scientific research permit to take sea turtles had been submitted by Dr. Salmon. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Dr. Schmid's research activities will characterize the aggregations of marine turtles in the nearshore waters of Lee County in southwest Florida. The permit holder will annually capture 130 Kemp's ridley, 50 loggerhead, 20 green, and five hawksbill turtles. Turtles will be collected in Pine Island Sound, San Carlos Bay, Estero Bay, and adjacent Gulf of Mexico waters using a large-mesh, run-around strike net. Turtles will be measured, weighed, and tagged with Inconel and passive integrated transponder tags. Tissue samples will be collected for genetic and stable isotope analyses. A subset of Kemp's ridleys will be held for 24–48 hrs. for fecal sample collection. Another subset of Kemp's ridleys will receive electronic transmitters to investigate their movements, home range, and habitat associations. The permit is a five-year permit.

Dr. Salmon will study when green sea turtle navigation is guided by magnetic versus solar cues. Animals will be captured by hand, handled, weighed, measured, flipper and passive integrated transponder tagged, transported, temporarily held for experiments in an outdoor tank arena, and released. Researchers will capture and conduct research on up to 40 animals on near shore reefs of Palm Beach County, Florida over the course of the permit. The permit is issued for 3 years.

Issuance of these permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 17, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–9252 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XO83

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council's (Council) VMS/Enforcement Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Friday, May 8, 2009 at 9:30 a.m.

ADDRESSES: *Meeting address*: The meeting will be held at the Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; Telephone: (978) 777–2500; Fax: (978) 750–7991.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

(1) The committee will review and discuss management alternatives under development in Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP), which may include measures to establish annual catch limits and accountability measures, a catch monitoring program for the Atlantic herring fishery, management measures to address/minimize bycatch, and measures to address access by herring vessels to groundfish closed areas; and develop Enforcement Committee recommendations for Herring Committee/Council consideration.

(2) The enforcement discussion regarding Amendment 4 to the Herring FMP will likely focus on the details of

the proposed alternatives to establish a catch monitoring program, including: provisions for ''maximized retention'' and other measures to address slippage and minimize bycatch; measures to implement a dockside monitoring program; measures to improve reporting, compliance, and quota monitoring; and measures to address at-sea monitoring (including measures to improve observer working conditions and data collection);

(3) Other business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 17, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–9189 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–X027

International Whaling Commission; 61st Annual Meeting; Announcement of Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: This notice announces the date, time, and location of the public meetings being held prior to the 61st annual International Whaling Commission (IWC) meeting.

DATES: The public meetings will be held May 27 and May 29, 2009, at 1 p.m.

ADDRESSES: The meeting on May 27th will be held in the Chesapeake Room of the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting on May 29th will be held in the NOAA Western Regional Center Auditorium, 7600 Sand Point Way N.E., Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, 301–713–9090, Extension 196.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies.

Once the draft agenda for the annual IWC meeting is completed, it will be posted on the IWC Secretariat's website at *http://www.iwcoffice.org*.

NOAA will hold meetings prior to the annual IWC meeting to discuss the tentative U.S. positions for the upcoming IWC meeting, including the upcoming report of the Small Working Group. Because the meeting discusses U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation.

Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings.

The May 27th meeting will be held at 1 p.m. in the Chesapeake Room of the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. The meeting on May 29th will be held at 1 p.m. in the NOAA Western Regional Center Auditorium, 7600 Sand Point Way N.E., Seattle, WA 98115. WA. Photo identification is required to enter the building.

Special Accommodations

Both meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ryan Wulff, 301–713–9090 by May 4, 2009.

Dated: April 16, 2009.

Rebecca J. Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E9–9256 Filed 4–21–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System; Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Requests for Equitable Adjustment (OMB Control Number 0704–0397)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through April 30, 2009. DoD proposes that OMB extend its approval for use for three additional years.

DATES: DoD will consider all comments received by June 22, 2009.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0397, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: dfars@osd.mil.* Include OMB Control Number 0704–0397 in the subject line of the message.

- *Fax:* 703–602–7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, 703–602–0302. The information collection requirements addressed in this notice are available on the World Wide Web at: *http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html.* Paper copies are available from Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 243, Contract Modifications, and related clause at DFARS 252.243–7002; OMB Control Number 0704–0397.

Needs and Uses: The information collection required by the clause at DFARS 252.243–7002, Requests for Equitable Adjustment, implements 10 U.S.C. 2410(a). DoD contracting officers and auditors use this information to evaluate contractor requests for equitable adjustment to contract terms.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 2,120.

Number of Respondents: 440.

Responses per Respondent: 1.

Annual Responses: 440.

Average Burden per Response: 4.8 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.243–7002, Requests for Equitable Adjustment, requires contractors to certify that requests for equitable adjustment that exceed the simplified acquisition threshold are made in good faith and that the supporting data are accurate and complete. The clause also requires contractors to fully disclose all facts relevant to the requests for adjustment.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E9–9270 Filed 4–21–09; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0052]

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Security Service proposes to delete a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 22, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Defense Security Service, Office of FOIA/PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

FOR FURTHER INFORMATION CONTACT: Mr. Les Blake at (703) 325–9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above or via the agency Web site (*http://www.dss.mil*).

The Defense Security Service proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 16, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V8–02

SYSTEM NAME:

Key Contractor Management Personnel Listing (August 17, 1999, 64 FR 44704).

REASON:

The information contained in this system of records has been incorporated into a new centralized Industrial Security Field Database (ISFD) retrieved by the name of the cleared contractor facility or ''Cage Code'' associated with that facility, rather than by an individual's name or personal identifier. This system of records is being deleted.

[FR Doc. E9–9190 Filed 4–21–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0053]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense is amending a systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 22, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Office of Freedom of Information, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 16, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Reporting System (DEERS) DMDC 02—DoD (January 22, 2009, 74 FR 4001).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Income Security Programs wounded military service members and veterans for the purpose of expediting disability processing.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an ongoing computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment eligibility.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. **Note:** Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. For purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. **Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. For purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and MEDICAID Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting overpayment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to ensure proper payment of benefits for GI Bill education and training benefits by the

DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C, Chapter 1607), and the National Call to Service enlistment educational benefit (Title 10, Chapter 510). The Post-9/11 GI Bill (Title 38 U.S.C., Chapter 33) and The Transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and state agencies to validate demographic data (*e.g.,* Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub.L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and email addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing all reserve military members eligible for TRICARE Reserve Select (TRS) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10).

(2) Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as Reservists.

23. To foreign governments for law enforcement investigations.

The DoD ''Blanket Routine Uses'' published at the beginning of OSD's compilation of systems of records notices apply to this system.''

* * * * *

DMDC 02 DoD

SYSTEM NAME:

Defense Enrollment Eligibility Recording System (DEERS).

SYSTEM LOCATION:

EDS—Service Management Center, 1075 West Entrance Drive, Auburn Hills, MI 48326–2723.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members and other Uniform Service members, i.e. Department of Defense (DoD), Coast Guard, NOAA and USPHS; Reserve Members; National Guard members; State National Guard Employees; Presidential Appointees of all Federal Government agencies; DoD and Uniformed Service civil service employees, except Presidential appointees; Disabled American veterans; DoD and Uniformed Service contract employees; Former members (Reserve service, discharged RR or SR following notification of retirement eligibility); Medal of Honor recipients; Non-DoD civil service employees; U.S. Military Academy Students; Non-appropriated fund DoD and Uniformed Service employees (NAF); Non-Federal Agency Civilian associates, i.e. American Red Cross Emergency Services paid employees, Non-DoD contract employees; Reserve retirees not yet eligible for retired pay; Retired military members eligible for retired pay; Foreign Affiliates; DoD OCONUS Hires; DoD Beneficiaries; Civilian Retirees; Dependents; Members of the general public treated for a medical emergency in a DoD Medical Facility; Emergency Contact Person; Care Givers; Prior Military Eligible for VA benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name; Service or Social Security Number; enrollment number; relationship of beneficiary to sponsor; residence address of beneficiary or sponsor; date of birth of beneficiary; sex of beneficiary; branch of Service of sponsor; dates of beginning and ending eligibility; number of family members of sponsor; primary unit duty location of sponsor; race and ethnic origin of beneficiary; occupation of sponsor; rank/pay grade of sponsor; disability documentation; wounded, ill and injured identification information; Medicare eligibility and enrollment data; primary and secondary fingerprints and photographs of beneficiaries; blood test results; Deoxyribonucleic Acid (DNA); dental care eligibility codes and dental x-rays.

Catastrophic Cap and Deductible (CCD) transactions, including monetary amounts; CHAMPUS/TRICARE claim records containing enrollee, participant and health care facility, provider data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care; citizenship data/country of birth; civil service employee employment information (agency and bureau, pay plan and grade, nature of action code and nature of action effective date, occupation series, dates of promotion and expected return from overseas, service computation date); claims data; compensation data; contractor fee payment data; date of separation of former enlisted and officer personnel; demographic data (kept on others beyond beneficiaries) date of birth, home of record state, sex, race, education level; Department of Veterans Affairs disability payment records; digital signatures where appropriate to assert validity of data; email (home/work); emergency contact information; immunization data; Information Assurance (IA) Work Force information; language data; military personnel information (rank, assignment/deployment, length of service, military occupation, education, and benefit usage); pharmacy benefits; reason leaving military service or DoD civilian service; Reserve member's civilian occupation and employment information; education benefit eligibility and usage; special military pay information; SGLI/FGLI; stored documents for proofing identity and association; workforces information (*e.g.* Acquisition, First Responders); Privacy Act audit logs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23, Internal Security; DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); Pub. L. 106–265, Federal Long-Term Care Insurance; and 10 U.S.C. 2358, Research and Development Projects; 42 U.S.C., Chapter 20, Subchapter I–G, Registration and Voting by Absent Uniformed Services Voters and Overseas Voters in Elections for Federal Office, Sec. 1973ff, Federal responsibilities and DoD Directive 1000.4, Federal Voting Assistance Program (FVAP); Homeland Security Presidential Directive 12, Policy for a common Identification Standard for Federal Employees and Contractors; 38 CFR part 9.20, Traumatic injury protection, Servicemembers' Group Life Insurance and Veterans' Group Life Insurance; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards, i.e. Common Access Cards (CAC) or beneficiary cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

To authenticate and identify DoD affiliated personnel (*e.g.,* contractors); to assess manpower, support personnel and readiness functions; to perform statistical analyses; identify current DoD civilian and military personnel for purposes of detecting fraud and abuse of benefit programs; to register current DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are entitled; to ensure benefit eligibility is retained after separation from the military; information will be used by agency officials and employees, or authorized contractors, and other DoD Components for personnel and manpower studies; and to assist in recruiting prior-service personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data

matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

2. To the Office of Disability and Income Security Programs wounded military service members and veterans for the purpose of expediting disability processing.

3. To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

4. To each of the fifty states and the District of Columbia for the purpose of conducting an on going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

5. To provide dental care providers assurance of treatment eligibility.

6. To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

7. To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage. **Note:** Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

8. To the Department of Health and Human Services (HHS):

a. for purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to an HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage. **Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

b. for purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

c. To the Office of Child Support Enforcement, Federal Parent Locator Service, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; the relationship to a child receiving benefits provided by a third party and the name and SSN of those third party providers who have a legal responsibility. Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

d. For purposes of providing information to the Centers for Medicare and MEDICAID Services (CMS) to account for the impact of DoD healthcare on local reimbursement rates for the Medicare Advantage program as required in 42 CFR 422.306.

9. To the American Red Cross for purposes of providing emergency notification and assistance to members of the Armed Forces, retirees, family members or survivors.

10. To the Department of Veterans Affairs (DVA):

a. To provide military personnel, pay and wounded, ill and injured identification data for present and former military personnel for the purpose of evaluating use of veterans' benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968) and for DVA to administer the Traumatic Servicemember's Group Life Insurance (TSGLI) (Traumatic Injury Protection Rider to Servicemember's Group Life Insurance (TSGLI), 38 CFR 9.20).

c. To register eligible veterans and their dependents for DVA programs.

d. Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension Program (38 U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

(1) Providing full identification of active duty military personnel, including full time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty), the REAP educational benefit (Title 10 U.S.C., Chapter 1607), and the National Call to Service enlistment educational benefit (Title 10, Chapter 510). The Post-9/11 GI Bill (Title 38 U.S.C., Chapter 33) and The Transferability of education assistance to family members. The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does

permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

f. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

11. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

12. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

13. To Defense contractors to monitor the employment of former DoD employees and military members subject to the provisions of 41 U.S.C. 423.

14. To Federal and Quasi Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

15. To Federal and Quasi Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. has secured a written statement attesting to the recipients' understanding of, and willingness to abide by these provisions.

16. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

17. To Federal and state agencies to validate demographic data (e.g., Social Security Number, citizenship status, date and place of birth, etc.) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

18. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, Section 1701, and E.O. 13269, Expedited Naturalization).

19. To the Federal voting program to provide unit and email addresses for the purpose of notifying the military members where to obtain absentee ballots.

20. To the Department of Homeland Security for the conduct of studies related to the health and well-being of Coast Guard members and to authenticate and identify Coast Guard personnel.

21. To Coast Guard recruiters in the performance of their assigned duties.

22. To Federal Agencies, to include OPM, Postal Service, Executive Office of the President and Administrative Office of the Courts; to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing all reserve military members eligible for TRICARE Reserve Select (TRS) to be matched against the Federal agencies for providing those reserve military members that are also Federal civil service employees. This disclosure by the Federal agencies will provide the DoD with the FEHB eligibility and Federal employment information necessary to determine continuing eligibility for the TRS program. Only those reservists not eligible for FEHB are eligible for TRS (Section 1076d of title 10).

(2) Providing all reserve military members to be matched against the Federal agencies for the purpose of identifying the Reserve Forces who are also employed by the Federal Government in a civilian position, so that reserve status can be terminated if necessary. To accomplish an emergency mobilization, individuals occupying critical civilian positions cannot be mobilized as ''Reservists.''

23. To foreign governments for law enforcement investigations.

The DoD ''Blanket Routine Uses'' published at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (*e.g.,* fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically. All individuals granted access to this system of records are to have received Information Assurance and Privacy Act training.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771. Written requests should contain the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the OSD/JS FOIA Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should contain the name and number of this system of records notice along with the full name, Social Security Number (SSN), date of birth, and current address and telephone number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, personnel, pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, the National Oceanic and Atmospheric Administration, Department of Veterans Affairs, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–9191 Filed 4–21–09; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, May 6, 2009. The hearing will be part of the Commission's regular business meeting. The conference session and business meeting both are open to the public and will be held at the Commission's office building, located at 25 State Police Drive, West Trenton, New Jersey.

The conference among the commissioners and staff will begin at 10:30 a.m. and will consist of a presentation on the Christina Basin Targeted Initiative Watershed Grant Final Report and a presentation on the Special Area Management Plan for the Upper Wissahickon Creek Watershed. Conference session topics are subject to change. Accordingly, parties interested in attending should consult the Commission's Web site, *drbc.net*, closer to the meeting date.

The subjects of the public hearing to be held during the 1:30 p.m. business meeting include the dockets listed below:

1. *Aqua Pennsylvania, Inc. D–81–61 CP–4.* An application for approval of a ground water withdrawal project to renew the allocation included in Docket D–81–61 CP–3 and consolidate all other docket approvals for the Fawn Lakes, Woodloch Springs and Masthope water systems, retaining the existing withdrawal from all wells of 18.38 mg/30 days. Docket D–81–61 CP–4 will consolidate allocations approved in dockets D–81–61 CP–3, D–87–96 Renewal, and D–89–57 CP Renewal. The projects are located in the Catskill Formation in the Westcolang Creek Watershed in Lackawaxen Township, Pike County, Pennsylvania, within the drainage area of the section of the non-tidal Delaware River known as the Upper Delaware, which is designated as Special Protection Waters.

2. *Matamoras Municipal Authority D–81–78 CP–8.* An application for approval of an expansion of the public water supply service area of the Matamoras Municipal Authority. The applicant seeks no increase in its groundwater withdrawal allocation and will continue to supply up to 19.5 million gallons per thirty days (mg/30 days) for public water supply. The project is located in the Delaware River Watershed in the Borough of Matamoras, Pike County, Pennsylvania. The site is located within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters.

3. *New Jersey American Water Company D–90–108 CP–3.* An application for renewal of a ground water withdrawal project to continue the combined withdrawal of 1,851.14 mg/30 days to supply the applicant's public water supply system from 65 existing wells screened in the Potomac/Raritan/Magothy (PRM), Mt. Laurel/Wenonah, and Englishtown aquifers. The applicant wishes to consolidate within a single DRBC docket approval several interconnected private systems that it has acquired. The project wells are located in multiple watersheds in the western portions of Burlington and Camden counties. Included in the application is a request for the approval of three new wells to replace three existing wells (Old Orchard Wells Nos. 36 and 37 and Haddon Heights Well No. 30) that have experienced declining yields over time. The 65 wells are located in the municipalities of Cherry Hill, Somerdale, Haddon Heights, Runnemeade, Barrington, Gloucester, Magnolia, Laurel Springs, Voorhees, Camden City, and Gibbsboro in Camden County and the municipalities of Cinnaminson, Delran, Beverly, and Edgewater Park in Burlington County, New Jersey. A Notice of Application Received (NAR) was issued for this project on February 10, 2009. This second NAR reflects a change in the total number of wells and the number of wells being replaced.

4. *Buckingham Township D–2003–13 CP–5.* An application for approval of a ground water withdrawal project to supply up to 9.63 mg/30 days of water to the applicant's public water supply distribution system from new wells nos. F–8 in the Limeport Formation (limestone) and F–9 in the Leithsville Formation (dolomite). The applicant proposes to retain the existing total allocation of 42 mg/30 days for all system wells. Well No. F–9 will be on stand-by and used during emergency

periods only. The project will allow the docket holder to add flexibility and redundancy and to relieve stress on its Furlong distribution system. The project is located in the Neshaminy, Pine Run, Mill Creek, Lahaska Creek, Watson Creek and Robin Run watersheds in Buckingham Township, Bucks County, Pennsylvania, within in the Southeastern Pennsylvania Ground Water Protected Area.

5. *Caesars d/b/a Cove Haven, Inc. D–2006–19–2.* An application for approval to continue discharging 0.084 mgd of treated effluent from the Brookdale WWTP. The WWTP is located at River Mile 213–3.9–0.9–11.4–2.85–0.15 (Delaware River—Brodhead Creek—McMichael Creek—Pocono Creek—Scot Run—Brookdale Lake). The WWTP is located on Brookdale Lake, within the drainage area of the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters with the classification Outstanding Basin Waters. The project is located in Pocono Township, Monroe County, Pennsylvania.

6. *Lower Frederick Township D–78–41 CP–2.* An application for approval of modification of the Lower Frederick Township Wastewater Treatment Plant (WWTP). The docket holder proposes to replace the current disinfection system (chlorine contact tank) with an ultraviolet light (UV) disinfection system and to replace the existing outfall pipe. This project also seeks approval for a 1998 rerate of the WWTP from 0.16 million gallons per day (mgd) to 0.20 mgd, which was not previously approved by the Commission. The WWTP will continue to discharge to the Perkiomen Creek, a tributary of the Schuylkill River. The facility is located in Lower Frederick Township, Montgomery County, Pennsylvania.

7. *West Grove Borough Authority D–87–24 CP–2.* An application for approval of modifications to the Borough of West Grove's WWTP. The applicant proposes to upgrade the facility's contact aeration basin system, including the installation of a sewage grinder and return activated sludge lines, and the replacement of biological media and aeration diffusers. The facility's annual average flow of 0.250 mgd and hydraulic design capacity of 0.288 mgd will remain unchanged. The WWTP will continue to discharge to the Middle Branch White Clay Creek, a tributary of the Christina River. The facility is located in London Grove Township, Chester County, Pennsylvania.

8. *Schuylkill County Municipal Authority D–90–49 CP–4.* An application for approval of a docket modification to include an additional well that will transfer approximately 0.6 mg/30 days of ground water from the Susquehanna River Basin to the Delaware River Basin. The transferred water will be distributed within the project service area and, with the exception of some operational loss, will be returned to the Susquehanna River Basin as wastewater. In periods of increased service area demand, the Authority will transfer as much as 4.56 mg/30 days of ground water from the Susquehanna Basin into the Delaware Basin, and wastewater exportation will increase to as much as 4.35 mg/30 days. The project is located in Butler, Cass, Foster and New Castle townships, Schuylkill County, Pennsylvania. A Notice of Application Received (NAR) was issued for this project on February 10, 2009. This second NAR has been revised to reflect an increase in the amount of wastewater proposed to be exported from the basin.

9. *Pennsylvania American Water Company D–91–14–2.* The purpose of this project is to change the treatment technology at the docket holder's WWTP from a Rotating Biological Contactor (RBC) to a Sequential Batch Reactor (SBR). Additionally, the existing WWTP has a hydraulic design capacity of 0.135 mgd. The docket holder's NPDES permit has effluent limits based upon a 0.275 mgd discharge. The docket holder is seeking DRBC approval for expansion to 0.275 mgd. The project is located approximately 2000 feet east of Blue Mountain Lake and approximately 500 feet west of the Smithfield Township line in DRBC Water Quality Zone 1D at River Mile 213.0–5.3–2.9 (Delaware River—Brodhead Creek—Sambo Creek). Sambo Creek is a tributary of the section of the non-tidal Delaware River known as the Middle Delaware, which is designated as Special Protection Waters with the classification Outstanding Basin Waters.

10. *Evesham Municipal Utilities Authority D–91–15 CP–2.* An application to upgrade the Kings Grant wastewater treatment plant to replace treatment process tanks nearing the end of their useful life with a more cost effective and efficient treatment process. No increase in the existing permitted capacity of 0.6 mgd is proposed, and the discharge will continue to be conveyed to infiltration basins in the South Branch Rancocas Creek Watershed. The treatment plant will continue to serve the Kings Grant section of Evesham Township, Burlington County, New Jersey.

11. *Shoemakersville D–93–74 CP–2.* The purpose of this project is to recognize the increase in capacity of the Shoemakersville WWTP's hydraulic load from 0.60 mgd to 0.75 mgd. Additionally, a TDS determination was submitted, requesting approval of monthly average and instantaneous maximum concentration values of 2,131 mg/l and 3,844 mg/l, respectively. The project is located on the Schuylkill River at River Mile 92.47—92.3, in the Borough of Shoemakersville, Berks County, Pennsylvania.

12. *Town of Georgetown D–94–37 CP–2.* An application for the renewal of a ground water withdrawal project and to increase the withdrawal from 24.8 mg/30 days to 43.2 mg/30 days to supply the applicant's public water supply distribution system from existing wells nos. 1, 1A and 2R in the Columbia and Manokin Formations. The project involves the exportation of water from the Delaware Basin, and the exportation of 100 percent of the wastewater generated by in-basin needs. The ground water withdrawal project is located in the Broadkill-Smyrna Watershed in the Town of Georgetown, Sussex County, Delaware.

13. *East Penn Manufacturing D–2003–23–2.* An application for approval of a ground water withdrawal project to supply up to 21.6 mg/30 days of water to the applicant's on-site industrial plant processes and potable supply from new Well No. 10 and to increase the existing withdrawal from all wells from 15 mg/30 days to 20 mg/30 days. The increased allocation is requested in order to meet projected increases in production facility needs and to provide redundancy within the water supply system. The project well is located in the Leithsville Formation in the Moselem Creek Watershed in Richmond Township, Berks County, Pennsylvania.

14. *West Deptford Energy Station D–2008–27–1.* An application to approve the cooling water withdrawal and industrial wastewater discharge associated with the construction of a new gas fired, 1,500 megawatt combined cycle power generation facility known as the West Deptford Energy Station (WDES). The WDES will withdraw an average of 222.6 mg/30 days and maximum of 287.7 mg/30 days of treated effluent from the Gloucester County Utilities Authority (GCUA) wastewater treatment plant's effluent pipeline as a cooling water source. The WDES will also discharge a monthly average of 2.0 mgd (2.6 mgd daily maximum) of industrial wastewater back to GCUA's existing effluent pipeline (WDES Outfall No. DSN002A) and the two combined effluents will discharge from GCUA's existing outfall (No. DSN001A). The facility is located

in West Deptford Township, Gloucester County, New Jersey.

15. *Clayton Sand Company D–2008–37–1.* An application for approval of an existing ground and surface water withdrawal project to continue to supply up to 215 mg/30 days of water to the applicant's industrial facility from existing Well No. 1 and Intake No. 1. The project is located in the Cohansey Formation in the Rancocas Creek Watershed in Woodland Township, Burlington County, New Jersey.

In addition, a public hearing will be held on a resolution to amend the Commission's fee schedule for the review and renewal of project approvals in accordance with Section 3.8 and Article 10 of the *Delaware River Basin Compact.* A copy of the proposed resolution can be viewed on the Commission's Web site, *drbc.net.* The business meeting also will include adoption of the Minutes of the Commission's March 11, 2009 business meeting; announcements of upcoming DRBC advisory committee meetings and other events of general interest; a report on hydrologic conditions in the basin; a report by the Executive Director; a report by the Commission's General Counsel; and consideration by the Commission of resolutions concerning (a) future updates of DRBC Water Quality Regulations, (b) election of the Commission Chair, Vice Chair and Second Vice Chair for the year 2009–2010, commencing July 1, 2009, and (c) a adoption of the fiscal year 2010 budget. A public hearing on the proposed fiscal year 2010 budget was held in December of 2008. An opportunity for public dialogue will be provided at the end of the meeting.

Draft dockets scheduled for public hearing on May 6, 2009 can be accessed through the Notice of Commission Meeting and Public Hearing on the Commission's Web site, *drbc.net*, ten days prior to the meeting date. Additional documents relating to the dockets and other items may be examined at the Commission's offices. Please contact William Muszynski at 609–883–9500, extension 221, with any docket-related questions.

Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the informational meeting, conference session or hearings should contact the commission secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how the Commission can accommodate your needs.

Dated: April 15, 2009.

Pamela M. Bush,

Commission Secretary.

[FR Doc. E9–9136 Filed 4–21–09; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students

Overview Information

Foreign Language Assistance Program—State Educational Agencies (SEAs).

Notice inviting applications for new awards for fiscal year (FY) 2009.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.293C.

Dates:

Applications Available: April 21, 2009.

Deadline for Notice of Intent to Apply: May 11, 2009.

Deadline for Transmittal of Applications: May 27, 2009.

Deadline for Intergovernmental Review: July 27, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Foreign Language Assistance Program (FLAP) provides grants to SEAs for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. An SEA that receives a grant under this program must use the funds to support programs that promote systemic approaches to improving foreign language learning in the State.

Priorities: Competitive Preference Priority #1 is from the notice of final priority for this program published in the **Federal Register** on May 19, 2006 (71 FR 29222). In accordance with 34 CFR 75.105(b)(2)(iv), Competitive Preference Priority #2 is from section 5493 of the Foreign Language Assistance Act of 2001 (20 U.S.C. 7259b).

Competitive Preference Priority #1. For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

This priority is:

Critical Need Languages

This priority supports projects that establish, improve, or expand foreign language learning, primarily during the traditional school day, within grade kindergarten through grade 12, and that exclusively teach one or more of the following less commonly taught languages: Arabic, Chinese, Korean, Japanese, Russian, and languages in the Indic, Iranian, and Turkic language families.

Competitive Preference Priority #2: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority.

This priority is:

Applications describing programs that are carried out through a consortium comprised of the SEA receiving the grant and an elementary or secondary school.

Program Authority: 20 U.S.C. 7259a–7259b.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98 and 99. (b) The notice of final priority, published in the **Federal Register** on May 19, 2006 (71 FR 29222).

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $750,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $50,000–$400,000.

Estimated Average Size of Awards: $187,000.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Assistant Deputy Secretary and Director for the Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months. Applications that request funding for a project period of other than 36 months will be deemed ineligible and will not be read.

III. Eligibility Information

1. *Eligible Applicants:* SEAs.

2. *Cost Sharing or Matching:* Section 5492(c)(1) of the Foreign Language Assistance Act of 2001 (20 U.S.C. 7259a(c)(1)) requires that the Federal share of a project funded under this program for each fiscal year be 50 percent. For example, an SEA requesting $100,000 in Federal funding for its foreign language program each fiscal year must match that amount with $100,000 of non-Federal funding for each year. 34 CFR 80.24 of EDGAR addresses Federal cost-sharing requirements.

IV. Application and Submission Information

1. *Address to Request Application Package:* Amanda Feliciano, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C124, Washington, DC 20202–6510. Telephone: (202) 401–1339 or by e-mail: *Amanda.Feliciano@ed.gov.*

Note: Please include ''84.293C FLAP SEA Application Request'' in the subject heading of your e-mail.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Notice of Intent to Apply: If you intend to apply for a grant under this competition, contact Amanda Feliciano by e-mail: *Amanda.Feliciano@ed.gov.*

Note: Please include ''84.293C FLAP SEA Intent to Apply'' in the subject heading of your e-mail. The e-mail should specify: (1) The SEA name and (2) language(s) of instruction. We will consider an application submitted by the deadline date for transmittal of applications, even if the applicant did not provide us notice of its intent to apply.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 35 pages using the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the two-page abstract. However, the page limit does apply to all of the application narrative section in Part III.

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: April 21, 2009.

Deadline for Notice of Intent to Apply: May 11, 2009.

Deadline for Transmittal of Applications: May 27, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 27, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Foreign Language Assistance Program—State Educational Agencies, CFDA number 84.293C, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. E–Application will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until 8 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8 p.m. on Sundays and 6 a.m.

on Mondays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) The person listed elsewhere in this notice under *For Further Information Contact* (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C144, Washington, DC 20202–6510. FAX: (202) 260–5496.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293C), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.293C), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the following paragraphs. The *Notes* we have included after each criterion are guidance to assist applicants in understanding each criterion as they prepare their applications and are not required (except that Note I under paragraph (b) and the note under paragraph (d) are required) by statute or regulation. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (5 points).

The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

Notes for (a) Need for project

Note I: In addressing this criterion, applicants may want to describe how the SEA identified the specific foreign language needs in the State.

Note II: In addressing this criterion, applicants may also want to describe how the proposed project will meet the needs in the State by training teachers and developing assessments, standards, or curriculum.

(b) *Quality of the project design.* (60 points).

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(5) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(6) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

Notes for (b) Quality of the project design

Note I: Please note that Title V, part D, subpart 9, section 5492 of the Elementary and Secondary Education Act of 1965, as amended, provides grants for innovative model programs providing for the establishment, improvement, or expansion of foreign language study for elementary and secondary school students. An SEA that receives a grant under this program must use the funds to support programs that promote systemic approaches to improving foreign language learning in the State.

Note II: In addressing this criterion, applicants may want to consider describing how the project is aligned with standards for foreign language learning and performance guidelines for K–12 learners.

Note III: In addressing this criterion, for school-based projects, applicants may want to describe how performance objectives are ambitious but realistic; raise expectations for student achievement; provide ways for students to demonstrate progress each year of the grant; and are achievable using the target languages, the planned model of instruction, and contact hours in the targeted languages.

Note IV: In discussing this criterion the applicant may want to describe how program objectives are aligned with the Government Performance and Results Act (GPRA) measures for this program.

Note V: In addressing this criterion, applicants may want to consider discussing how the project design is based on a review of the relevant literature to include available curriculum, instructional materials and assessments in the target language.

(c) *Quality of project personnel.* (10 points).

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. In addition, the Secretary considers the following factors:

(1) The qualifications, including relevant training and experience, of the project director or principal investigator.

(2) The qualifications, including relevant training and experience, of key project personnel.

(d) *Quality of the management plan.* (10 points).

The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Note for (d) Quality of the management plan

34 CFR 75.112(b) of EDGAR requires an applicant to include a narrative that describes how and when, in each budget period of the project, the applicant plans to meet each project objective.

(e) *Quality of the project evaluation.* (15 points).

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(2) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(3) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(4) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

Notes for (e) Quality of the project evaluation

Note I: Grantees will be expected to report on the progress of their evaluation through the required annual performance report as discussed in section VI.4 of this notice.

Note II: In addressing this criterion, applicants may want to consider using the evaluation plan to shape the development of the project from the beginning of the grant period. Applicants also may want to include benchmarks to monitor progress toward specific project objectives, including ambitious student foreign language proficiency objectives, and outcome measures to assess the impact on teaching and learning or other important outcomes for project participants.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Grant Administration:* Applicants are encouraged to budget for a two-day meeting for project directors in Washington, DC and attending a FLAP meeting at the American Council on the Teaching of Foreign Languages (ACTFL) Conference in San Diego.

4. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* In response to the Government Performance and Results Act (GPRA), the Department developed one objective for evaluating the overall effectiveness of the Foreign Language Assistance Program (FLAP) SEA program.

Objective 1: To improve foreign language teaching.

Measure 1.1 of 2: The number of teachers in the State receiving training as a result of the FLAP SEA project(s).

Measure 1.2 of 2: The number of schools that use the assessments, standards, or curriculum developed by the FLAP SEA project(s) in the State.

We will expect each SEA funded under this competition to document how its project is helping the Department meet these performance measures. Grantees will be expected to report on progress in meeting these performance measures in their Annual Performance Report and in their Final Performance Report.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW., room 5C144, Washington, DC 20202–6510. Telephone: (202) 401–1443 or by e-mail: *rebecca.richey@ed.gov* or Ana Garcia, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5C147, Washington, DC 20202–6510. Telephone: (202) 401–1440 or by e-mail: *ana.garcia@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact persons listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 16, 2009.

Richard Smith,

Acting Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. E9–9138 Filed 4–21–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 7, 2009. 6 p.m.

ADDRESSES: Ohio State University, South Center, 1864 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Approval of April Meeting Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentations.
- *Administrative Issues:*
  - Committee Updates.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html*.

Issued at Washington, DC, on April 17, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–9198 Filed 4–21–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–151–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

April 16, 2009.

Take notice that on April 14, 2009, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221–5887, filed a prior notice request pursuant to Parts 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and National Fuel's blanket certificate issued in Docket No. CP83–4–000, for authorization to abandon one injection/withdrawal well in Wharton Storage Field located in Potter County, Pennsylvania, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, National Fuel proposes to abandon one injection/withdrawal well (Well WH–34) and the associated well line (TRW–34) in Wharton Storage Field located in Potter County, Pennsylvania. National Fuel states that Well WH–34 is no longer useful due to poor injection performance and poor deliverability and needs to be reconditioned or plugged due to deterioration of the well casing. National Fuel asserts that all work will be confined to the existing well site. National Fuel states that after Well WH–34 is plugged and abandoned, the well site will be restored and revegetated. National Fuel also proposes to abandon in place well line TRW–34, totaling approximately 1,200 feet of 6-inch diameter well line. National Fuel asserts that the cost to construct similar facilities today is approximately $1 million. National Fuel avers that the proposed abandonment will not result in a material decrease in service to customers.

Any questions regarding the application should be directed to David W. Reitz, Deputy General Counsel, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221–5887, at (716) 857–7949.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9229 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12429–001—Montana]

Clark Canyon Dam Hydroelectric Project; Notice of Availability of Environmental Assessment

April 15, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed Clark Canyon Hydro, LLC's application for license for the proposed Clark Canyon Dam Hydroelectric Project, located at Clark Canyon reservoir on the Beaverhead River near the city of Dillon, Beaverhead County, Montana, and has prepared an environmental assessment (EA) for the project. The proposed project would occupy a total of 1.15 acres of Federal lands administered by the U.S. Bureau of Reclamation.

The EA contains the staff's analysis of the potential environmental impacts of the project, and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days [1] from the date of this notice and should be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12429–001 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. For a simpler method of submitting text-only comments, click on ''Quick Comment.''

For further information, contact Dianne Rodman by telephone at 202–502–6077 or by e-mail at *dianne.rodman@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9172 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP09–110–000;CP07–4–002]

Mississippi Hub, LLC; Notice of Filing

April 15, 2009.

On April 7, 2009, Mississippi Hub, LLC (MS Hub), pursuant to section 7(c) of the Natural Gas Act (NGA), for authorization to expand the MS HUB Gas Storage Project (Expansion) previously certificated in CP07–4–000, *et al.* on February 15, 2007, as amended, in Covington, Jefferson Davis, and Simpson Counties, Mississippi. MS Hub proposes to increase the total capacity of each of its two authorized caverns by 2.38 Billion cubic feet (Bcf) (1.5 Bcf working gas and 0.88 Bcf cushion gas); increase the maximum injection and withdrawal rate of the storage facility; add four 7,700 horsepower (hp) compressor units in lieu of three 5,000 hp compressor units previously authorized; and, construct 14.2 miles of 24-inch diameter pipeline and 22.6 miles of 30-inch diameter pipeline interconnects. MS Hub requests a finding that after the Expansion, the storage project's operation will not exercise market power so that market-based rates may continue to be charged for these services.

Questions concerning this application may be directed to William Rapp, Liberty Gas Storage, 101 Ash Street, San Diego, CA 92101, at (619) 699–5050.

On September 15, 2008, the Commission staff granted MS Hub's request to utilize the Pre-filing Process and assigned Docket No. PF08–29–000 to staff activities involving the Expansion. Now, as of the filing of this application on April 7, 2009, the Pre-filing Process for this project has ended. From this time forward, these proceedings will be conducted in the Dockets noted in the caption to this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9174 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL09–46–000; QF09–321–001]

East Bay Municipal Utility District; Notice of Filing

April 15, 2009.

Take notice that on April 3, 2009, East Bay Municipal Utility District (EBMUD) filed a petition for declaratory order, requesting a limited waiver of the filing requirement for its qualifying congeneration facility, for the period of March 17, 2006 to April 3, 2009, pursuant to section 292.203(b)(2) of the

[1] Although the typical comment period for an EA is 30 days, the comment period in this instance is 45 days to allow the U.S. Fish and Wildlife Service and others to respond to Commission staff's preliminary section 10(j) determination, as discussed in section 5.4.1 of the EA.

Commission's regulations, 18 CFR 292.203(b)(2).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on April 30, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9171 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7269–026]

James B. Boyd and Janet A. Boyd; Notice of Termination of License by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

April 15, 2009.

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 7269–026.

c. *Date Initiated:* March 13, 2009.

d. *Licensee:* The licensee is James B. Boyd and Janet A. Boyd.

e. *Name and Location of Project:* The Jim Boyd Project is located on the Umatilla River, in Umatilla County, Oregon.

f. *Filed Pursuant to:* 18 CFR 6.4.

g. *Licensee Contact Information:* Janet A Boyd, (Dennis B. Logan), 7661 Paterson Ferry Road, Irrigon, OR 97844.

h. *FERC Contact:* William Guey-Lee, (202) 502–6064.

i. *Deadline for filing comments, protests, and motions to intervene:* June 1, 2009.

All documents (original and eight copies) should be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–7269–026) on any documents or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Existing Facilities:* The project consists of a 3.5-foot-high concrete diversion weir; a canal intake structure equipped with trash racks, fish screens, and flowbays; a 5,350-foot-long power canal; a penstock headworks; four 60-inch-diameter, 280-foot-long penstocks; a powerhouse containing four, 300-kW propeller turbine-generating units; and a .25-mile-long, 12.47-kilovolt transmission line, and appurtenant facilities.

k. *Description of Proceeding:* 18 CFR 6.4 of the Commission's regulations provides, among other things, that it is deemed to be the intent of a licensee to surrender a license, if the licensee abandons a project for a period of three years.

The project was issued a minor license in 1984 to Mrs. Boyd and her husband, James B. Boyd. The project has not operated since June 2002 when its power purchase agreement expired. Sometime prior to that, Mr. Boyd passed away, and Mrs. Boyd sold the project to Mr. Logan without prior Commission approval. After the project was sold, Mr. Logan, who had been a project representative on behalf of the licensees, became the contact person for Commission staff. On December 24, 2002, Commission staff from the Commission's Portland Regional Office (Regional Office) directed Mr. Logan to file an application for approval to transfer the license from Ms. Boyd to him. He failed to do so.

The Regional Office conducted inspections of the project on June 20, 2003; April 27, 2004; June 22, 2006; and August 30, 2006. Compliance issues (in addition to power generation shutdown and unauthorized transfer of project property) were discovered, including the failure to control vegetation growth (in the April 27, 2004 inspection), which was temporarily corrected, and the failure to remove concrete panels from the dam to expedite fish passage during period of power operations shutdown, and the failure to correct an oil leak from the project's hydraulic hoses (in the June 22 and August 30, 2006 inspections).

Following its June 22, 2006 inspection, on July 7, 2006, the Regional Office sent Mr. Logan a follow-up letter, noting once again that the project had been transferred without Commission approval, and had not been operated since June 2002. The Regional Office also noted that the removal of the dam's concrete panels was needed to expedite fish passage; that the inspection and repair of the project's hydraulic hoses, supply lines, and connections were needed for operation of the project's diversion gates; and that Mr. Logan should file proof of the completion of these maintenance requirements.

On August 21, 2006, Mr. Logan responded, providing a schedule to put the project back into operation by the Fall of 2007. On September 21, 2006, the Regional Office acknowledged the removal of the concrete panels and inspection of the hoses and supply line, and required Mr. Logan to file monthly progress reports on the repairs and modifications necessary to bring the project back on line by the end of 2007. According to Mr. Logan, activities required to restart operation include installation of a new transmission line, purchase of new underground cable, certification of the project as green power, and repairs to the housing facility and turbines.

The project has not operated since 2002, when PacifiCorp terminated its power sales contract with the licensee. The efforts of Mrs. Boyd and Mr. Logan

to comply with project maintenance requirements have been slow and spotty, occurring over extended periods and the project is still not operating six years after power generation ceased. Mr. Logan's last monthly report of the progress of project rehabilitation was filed approximately a year and one half ago, and the reports that were filed mostly were comprised of checklists of inspections and little project rehabilitation progress. To date, the licensee has not made the necessary repairs to resume operations at the project and the project is hereby considered abandoned. On March 13, 2009, the Commission issued an order dismissing application to transfer license and initiating implied surrender proceeding.

l. *Location of the Order:* A copy of the order is available for inspection and reproduction at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the proceeding.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', and ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', as applicable, and the Project Number of the proceeding. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9173 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board for Senior Executives (PRB)

April 16, 2009.

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4). The Commission's PRB will add the following member: James A. Pederson

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9228 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

April 15, 2009.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. CP03–75–003	4–6–09	William Morrison.
2. CP07–62–000, CP07–63–000, CP07–64–000, CP07–65–000	3–27–09	Matthew W. Jones.
3. EL07–86–000, EL07–88–000, EL07–92–000, ER04–691–000	3–26–09/4–6–09	Jerry Busse.[1]
Exempt:		
1. P–2210–169	4–14–09	Stephen Rynas.
2. P–12966–000	4–14–09	Ann Valdo Howard.

[1] Two separate e-mail submittals from Mr. Busse.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–9170 Filed 4–21–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8895–4]

Notice of Proposed Administrative Cashout Agreement Pursuant to Section 122(H)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Hassan Barrel Superfund Site, Fort Wayne, Allen County, IN

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Notice is hereby given of a proposed administrative settlement under CERCLA concerning the Hassan Barrel Superfund Site (''Site'') in Fort Wayne, Allen County, Indiana. Subject to review and comment by the public pursuant to this Notice, the settlement has been approved by the United States Department of Justice. The settlement resolves a United States Environmental Protection Agency (EPA) claim under Sections 106, 107(a), and 122 of CERCLA, against 61 parties who have executed binding certifications of their consent to the settlement, as listed below in the Supplementary Information section.

The settlement requires the settling parties to pay a total of $950,000 to the Hazardous Substances Superfund, Hassan Barrel Superfund Site, Special Account. Each settling party is required to pay an amount specified for that party in the settlement based upon the volume of waste that party contributed to the Site. The settling parties shall also pay to the EPA, 50% of the net environmental insurance proceeds recovered and received by some or all of the settling parties in a pending insurance recovery action. The payments shall not exceed the difference between $950,000 and EPA's estimate of total past response costs, which is approximately $1.7 million. Payments received shall be applied, retained, or used to finance the response actions taken or to be taken at or in connection with the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois.

DATES: Comments must be submitted on or before May 22, 2009.

ADDRESSES: The proposed settlement is available for public inspection at the EPA, Region 5, 7th Floor File Room, 77 West Jackson Boulevard, Chicago, Illinois. In addition, a copy of the proposed settlement also may be obtained from Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, or by calling (312) 886–7949. Comments should reference the Hassan Barrel Superfund Site, Fort Wayne, Allen County, Indiana and EPA Docket No. and should be addressed to Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION: The parties listed below have executed binding certifications of their consent to participate in the settlement.

The Performing Parties are as follows: Austin Petroleum, Inc., Buis Oil Company, Inc., Chroma Source Inc., Cintas Corporation, Colwell, Inc., Cooper Standard Automotive, Crystal Flash Petroleum Corporation, Dreyer's Grand Ice Cream, Inc., Fort Wayne Newspapers, Inc., Franklin Electric Co. Inc., Gregory Porter dba Porter's BP, Hartson-Kennedy Cabinet Top Co. Inc., Heritage-Cristal Clean LLC, Heritage Environmental Services LLC, Hoosier Tire & Rubber Corp., J.M. Reynolds Oil Co. Inc., Co-Alliance LLP f/k/a LaPorte County Co-op, Master Petroleum Products Inc., North Central Co-op, Phelps Dodge Industries Inc., Rackham Service Corp., Rea Magnet Wire Company Inc., Thomson Inc., Warner Oil Co., Yoder Oil.

The Buy-out Parties are as follows: 14/69 Car Wash Super Center Inc., American Electric Power Service Corporation on behalf of itself and Indiana Michigan Power Company, Autoliv ASP Inc., Carpenter Co., CME Automotive Corporation, Cole Pattern & Engineering, CTS Corporation, Eaton Corp/Eaton Aeroquip Inc., Fasson Roll North American Division of Avery Dennison Corporation, Gallahan Oil Co. Inc., Grabill Cabinet Company Inc., Griffith Rubber Mills of Garrett LLC, Harris Kayot/Fort Wayne Anodizing, K–Com Transportation Services Inc. (Kemark Environmental Service) Kemco International Inc., Keystone RV Company, Kimball International Inc. and Kimball Electronic Inc., Labecca LLC, Lift All Division of Hydra-Tech, Inc., McCoy Bolt Works Inc., McGill Manufacturing Co., McIntosh Energy Co. Inc., Metalloid Corporation, Parrot Press Inc., Elantas PDG Inc. f/k/a The PD George Company, Group Dekko Inc. f/k/a Pent Technologies, Rieke Corporation, Skyline Corporation, Square D, Sroufe Healthcare Products/Wilmot Holdings, Stonestreet & Stonestreet Oil Company (S&S Oil), Trelleborg Sealing Solutions (TSS F Wayne), Trelleborg YSH Inc., Tuthill Transfer Systems Tuthill Corp., United Technologies Corporation, Waggoner's Fuel Co. Inc.

FOR FURTHER INFORMATION CONTACT: Nola M. Hicks, Associate Regional Counsel (C–14J), Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or call (312) 886–7949.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, of 1980, 42 U.S.C. 9604, 9606(a), 9607, and 9622, as amended.

Dated: April 8, 2009.

Richard C. Karl,

Director, Superfund Division, Region 5.

[FR Doc. E9–9211 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0186; FRL–8410–7]

Clomazone and Fomesafen Registration Review Draft Ecological Risk Assessments; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft ecological risk assessments for the registration review of both clomazone and fomesafen and opens a public comment period on these documents. At the same time, EPA is initiating consultation for clomazone and fomesafen with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding potential effects to species listed as endangered or threatened under the Endangered Species Act. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed comprehensive draft ecological risk assessments, including endangered species effects determinations, for all clomazone and fomesafen uses. After reviewing comments received during the public comment period, EPA will issue final risk assessments, explain any changes from the draft risk assessments, and respond to comments. Once the ecological risk assessments have been finalized, the Agency will issue its proposed registration review decisions for these pesticides and seek public comment on any proposed risk mitigation. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before June 22, 2009.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: The chemical review manager identified in the table in Unit III.A. for the pesticide of interest.

For general questions on the registration review program, contact: Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

For general questions on OPP's Endangered Species Protection Program, contact: Arty Williams, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7695; fax number: (703) 308–4776 ; e-mail address: *williams.arty@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of clomazone and fomesafen pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing registered pesticides containing clomazone or fomesafen to ensure that they continue to satisfy the FIFRA standard for registration—that is, that these pesticides can still be used without unreasonable adverse effects on human health or the environment. Clomazone is a broad spectrum herbicide used to control annual grasses and broadleaf weeds in a wide variety of crops and locations. EPA has completed a comprehensive draft ecological risk assessment, including an endangered species effects determination, for all clomazone uses. Fomesafen is a pre-plant, pre-emergence and post-emergence herbicide used on soybeans, snap beans, dry beans, and cotton to control broadleaf weeds, grasses, and sedges. It is also registered for use on agricultural fallow/idle land, nonagricultural uncultivated areas/soils, pine (forest/shelterbelt) and pine (seed orchard). EPA has completed a comprehensive draft ecological risk assessment, including an endangered species effects determination for all fomesafen uses.

At present, EPA is announcing the availability of EPA's draft ecological risk assessments for the cases identified in the following table and is opening the public comment period on these documents.

TABLE—REGISTRATION REVIEW CASES WITH ECOLOGICAL RISK ASSESSMENTS

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Clomazone (Case No.7203)	EPA-HQ-OPP-2006-0113	Karen Santora, (703) 347-8781 *santora.karen@epa.gov*
Fomesafen (Case No.7211)	EPA-HQ-OPP-2006-0239	Wilhelmena Livingston, (703) 308-8025 *livingston.wilhelmena@epa.gov*

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft ecological risk assessments for clomazone and fomesafen. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to these draft risk assessments. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft ecological risk assessments. EPA will then issue revised risk assessments, explain any changes to the draft ecological risk assessments, and respond to comments. Once the ecological risk assessments have been finalized, the Agency will issue its proposed registration review decisions for these pesticides and seek public comment on the proposed risk mitigation.

Concurrent with opening the public comment periods for the draft ecological risk assessments for clomazone and fomesafen, the Agency will initiate consultation with the U.S. Fish and

Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (jointly referred to as ''the Services'') regarding potential effects from these pesticides to federally listed threatened or endangered species (listed species) and habitat designated as critical to such species. The result of consultation will be a biological opinion issued by the Services that expresses whether they believe the pesticide's use is likely to jeopardize the continued existence of any listed species or destroy or adversely modify habitat designated as critical to any listed species. If the Services determine there is likely jeopardy or adverse modification, they will provide reasonable and prudent alternatives to the action. If the Services conclude the action will result in ''take'' of any individuals of a listed species, they will specify reasonable and prudent measures to minimize such impact. The Agency will review and consider both the public comments received on the draft ecological risk assessments and, if provided, the information in the Service's biological opinions when developing its proposed registration review decisions.

As described in detail in the ''Clomazone Summary Document Registration Review: Initial Docket (January 2007), Section IV—Human Health Effects Scoping Document'' (see docket ID number EPA–HQ–OPP–2006–0113), the Agency believes that the human health assessments completed prior to registration review are adequate, and there are no dietary risks that exceed the Agency's level of concern. In addition, there are no residential uses of clomazone and all worker margins of exposure (MOEs) are below the Agency's level of concern. Thus, no additional human health data are needed for the registration review of clomazone.

Also, as described in detail in the ''Fomesafen Summary Document Registration Review: Initial Docket (March 2007), Section IV – Human Health Effects Scoping Document'' (see docket ID number EPA–HQ–OPP–2006–0239), the Agency believes that the human health assessments completed prior to registration review are adequate and there are no dietary risks that exceed the Agency's level of concern. In addition, there are no residential uses of fomesafen. The occupational scenarios do not result in risk concerns, with the exception of inhalation risks to mixer/loaders for aerial application. This risk was mitigated below the Agency's level of concern with the following change that is currently on the label: ''In addition, for aerial applications, mixers and loaders handling more than 140 gallons of Reflex Herbicide in any single workday must wear dust/mist filtering NIOSH-approved respirator with any N, R, P, or HE filter.''

1. *Other related information.* More information on EPA's review of these cases is available on the Registration Review Status web page, *http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm.* Information such as the active ingredients in each case, may be found in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

• To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.

• The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.

• Submitters must clearly identify the source of any submitted data or information.

• Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Registration review, Pesticides and pests.

Dated: April 13, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Review Program.

[FR Doc. E9–9231 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0513; FRL–8410–5]

Triclosan; Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

DATES: The deletions are effective October 19, 2009, unless the Agency receives a written withdrawal request on or before October 19, 2009. The Agency will consider a withdrawal request postmarked no later than October 19, 2009.

Users of these products who desire continued use on sites being deleted should contact the applicable registrant on or before October 19, 2009.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0513, by one of the following methods:

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; e-mail address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2007-0513. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses deleted:

TABLE 1.—REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Active Ingredient	Delete from Label
73951-1	VIV-20	Triclosan	Materials preservative used in paint formulations

Users of these products who desire continued use on sites being deleted should contact the applicable registrant before October 19, 2009 to discuss withdrawal of the application for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company Number	Company Name and Address
73951	Har-Met International, Inc. 60 Houk Road Doylestown, PA 18901

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to Heather Garvie using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than October 19, 2009.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Triclosan.

Dated: April 7, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs

[FR Doc. E9–8993 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0513; FRL–8410–6]

Triclosan, Notice of Receipt of Requests To Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by May 22, 2009 for registrations for which the registrant requested a waiver of the 180–day comment period, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than May 22, 2009, whichever is applicable. Comments must be received on or before May 22, 2009, for those registrations where the 180–day comment period has been waived.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2007–0513, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0513. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; e-mail address: *garvie.heather@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel two pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
70404-2	Irgasan DP300R	triclosan
70404-5	Irgaguard B1000	triclosan

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
70404	Ciba Corporation 4090 Premier Drive High Point, NC 27265

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before May 22, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Triclosan, Antimicrobials.

Dated: April 7, 2009.

Betty Shackleford,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. E9–8991 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2009–0235, FRL–8895–1]

Helmet Products Fire Superfund Site, Griffin, Spalding County, GA; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Helmet Products Fire Superfund Site located in Griffin, Spalding County, Georgia for publication.

DATES: The Agency will consider public comments on the settlement until May 22, 2009. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2009–0235 or Site name Helmet Products Fire Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *http://www.epa.gov/region4/waste/sf/enforce.htm.*
- *E-mail:* Painter.Paula@epa.gov.

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: April 3, 2009.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. E9–9226 Filed 4–21–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

April 14, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 22, 2009. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC, or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0249.

Title: Sections 74.781, 74.1281 and 78.69, Station Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; not-for-profit institutions; State, Federal or Tribal Governments.

Number of Respondents/Responses: 13,811 respondents/20,724 responses.

Estimated Time per Response: 30 minutes to 1 hour.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 11,726 hours.

Total Annual Costs: $8,295,600.

Nature and Extend of Confidentiality: There is no need for confidentiality with this collection of information.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 74.781 requires the following:

(a) The licensee of a low power TV, TV translator, or TV booster station shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by 17.49 of this Chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light: (1) The nature of such extinguishment or improper functioning. (2) The date and time the extinguishment or improper operation was observed or otherwise noted. (3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with 74.765(c) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 74.1281 requires the following:

(a) The licensee of a station authorized under this subpart shall maintain adequate station records, including the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents.

(b) Entries required by 17.49 of this chapter concerning any observed or otherwise known extinguishment or improper functioning of a tower light: (1) The nature of such extinguishment or improper functioning. (2) The date and time the extinguishment of improper operation was observed or otherwise noted. (3) The date, time and nature of adjustments, repairs or replacements made.

(c) The station records shall be maintained for inspection at a residence, office, or public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with 74.1265(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(d) Station logs and records shall be retained for a period of two years.

47 CFR 78.69 requires each licensee of a CARS station shall maintain records showing the following:

(a) For all attended or remotely controlled stations, the date and time of the beginning and end of each period of transmission of each channel;

(b) For all stations, the date and time of any unscheduled interruptions to the transmissions of the station, the duration of such interruptions, and the causes thereof;

(c) For all stations, the results and dates of the frequency measurements made pursuant to 78.113 and the name of the person or persons making the measurements;

(d) For all stations, when service or maintenance duties are performed, which may affect a station's proper operation, the responsible operator shall sign and date an entry in the station's records, giving:

(1) Pertinent details of all transmitter adjustments performed by the operator or under the operator's supervision.

(e) When a station in this service has an antenna structure which is required to be illuminated, appropriate entries shall be made as follows:

(1) The time the tower lights are turned on and off each day, if manually controlled. (2) The time the daily check of proper operation of the tower lights was made, if an automatic alarm system is not employed.

(3) In the event of any observed or otherwise known failure of a tower light:

(i) Nature of such failure.

(ii) Date and time the failure was observed or otherwise noted. (iii) Date, time, and nature of the adjustments, repairs, or replacements made. (iv) Identification of Flight Service Station (Federal Aviation Administration) notified of the failure of any code or rotating beacon light not corrected within 30 minutes, and the date and time such notice was given. (v) Date and

time notice was given to the Flight Service Station (Federal Aviation Administration) that the required illumination was resumed.

(4) Upon completion of the 3-month periodic inspection required by 78.63(c):

(i) The date of the inspection and the condition of all tower lights and associated tower lighting control devices, indicators, and alarm systems. (ii) Any adjustments, replacements, or repairs made to insure compliance with the lighting requirements and the date such adjustments, replacements, or repairs were made.

(f) For all stations, station record entries shall be made in an orderly and legible manner by the person or persons competent to do so, having actual knowledge of the facts required, who shall sign the station record when starting duty and again when going off duty.

(g) For all stations, no station record or portion thereof shall be erased, obliterated, or willfully destroyed within the period of retention required by rule. Any necessary correction may be made only by the person who made the original entry who shall strike out the erroneous portion, initial the correction made, and show the date the correction was made.

(h) For all stations, station records shall be retained for a period of not less than 2 years. The Commission reserves the right to order retention of station records for a longer period of time. In cases where the licensee or permittee has notice of any claim or complaint, the station record shall be retained until such claim or complaint has been fully satisfied or until the same has been barred by statute limiting the time for filing of suits upon such claims.

OMB Control Number: 3060–0568.

Title: Sections 76.970, 76.971 and 76.975, Commercial Leased Access Rates, Terms and Conditions.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 4,030 respondents; 11,940 responses.

Estimated Time per Response: 2 minutes—10 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154(i) and 612 of the Communications Act of 1934, as amended.

Total Annual Burden: 59,671 hours.

Total Annual Cost: $74,000.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.970(h) requires cable operators to provide the following information within 15 calendar days of a request regarding leased access (for systems subject to small system relief, cable operators are required to provide the following information within 30 days of a request regarding leased access):

(a) A complete schedule of the operator's full-time and part-time leased access rates;

(b) how much of the cable operator's leased access set-aside capacity is available;

(c) rates associated with technical and studio costs;

(d) if specifically requested, a sample leased access contract; and

(e) operators must maintain supporting documentation to justify scheduled rates in their files.

47 CFR 76.971 requires cable operators to provide billing and collection services to leased access programmers unless they can demonstrate the existence of third party billing and collection services which, in terms of cost and accessibility, offer leased access programmers an alternative substantially equivalent to that offered to comparable non-leased access programmers.

47 CFR 76.975(b) requires that persons alleging that a cable operator's leased access rate is unreasonable must receive a determination of the cable operator's maximum permitted rate from an independent accountant prior to filing a petition for relief with the Commission.

47 CFR 76.975(c) requires that petitioners attach a copy of the final accountant's report to their petition where the petition is based on allegations that a cable operator's leased access rates are unreasonable.

OMB Control Number: 3060–0716.

Title: Sections 73.88, 73.318, 73.685 and 73.1630, Blanketing Interference.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 21,000 respondents/21,000 responses.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 41,000 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.88(AM) states that the licensee of each broadcast station is required to satisfy all reasonable complaints of blanketing interference within the 1 V/m contour.

47 CFR 73.318(b)(FM) states that after January 1, 1985, permittees or licensees who either (1) Commence program tests, (2) replace the antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period.

47 CFR 73.318(c)(FM) states that a permittee collocating with one or more existing stations and beginning program tests on or after January 1, 1985, must assume full financial responsibility for remedying new complaints of blanketing interference for a period of one year.

Under 47 CFR 73.88(AM), 73.318(FM), and 73.685(d)(TV), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance to determine the cause of interference.

The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, In the Matter of Amendment of part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices. The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, ''Blanketing Interference.'' This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/

permittee of a broadcast station. To date, final rules have not been adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–9261 Filed 4–21–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina, and NB Holdings Corporation, Charlotte, North Carolina; to acquire 100 percent of the voting shares and thereby indirectly acquire Bank of America North Carolina, National Association, Charlotte, North Carolina (in organization).

Board of Governors of the Federal Reserve System, April 17, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–9181 Filed 4–21;–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 012034–001.

Title: Hamburg Sud/Maersk Line Vessel Sharing Agreement.

Parties: Hamburg-Sud and A.P. Moeller-Maersk A/S.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell LLP, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment deletes North Europe from the geographic scope of the agreement and makes corresponding operational changes to the parties' obligations under the agreement.

Dated: April 17, 2009.

By Order of the Federal Maritime Commission.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–9218 Filed 4–21–09; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicant

Trans BOS, LLC dba Transgroup International, 140 Eastern Avenue, Chelsea, MA 02150. Officer: Brenda Richards, Vice President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Estes Forwarding Woldwide LLC, 1100 Commerce Road, Richmond, VA 23224. Officer: Harold Weekly, Managing Director (Qualifying Individual).

Dated: April 17, 2009.

Tanga S. FitzGibbon,

Assistant Secretary.

[FR Doc. E9–9266 Filed 4–21–09; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Executive Subcommittee.

Time and Date:

April 28, 2009, 9 a.m.—5:30 p.m.

April 29, 2009, 9 a.m.—5:30 p.m.

Place: Marriott Wardman Park, 2660 Woodley Road, NW., Washington, DC 20008.

Status: Open.

Purpose: The NCVHS Executive Subcommittee will hold a public meeting on April 28–29, 2009 to help define and clarify the term ''Meaningful Use,'' a term used in the HITECH Act (part of the American Recovery and Re-invention Act [ARRA]). This hearing will obtain stakeholders' perspectives on the appropriate functional criteria for ''meaningful use'' of health information technology, both for the initial year of the ARRA Health IT incentive programs and the out years. The broader prospective for the inquiry is how the meaningful use of health information technology will support improvements in the quality, efficiency and safety of health care.

Contact Person for More Information: For substantive hearing information, please contact Denise Buenning at *denise.buenning@cms.hhs.gov,* phone 410–786–6711. The hearing will be broadcast over the Internet via the NCVHS homepage, *http://www.ncvhs.hhs.gov/.* Additional information about the meeting, including the agenda and questions shaping the discussions, will be posted in advance of the meeting at *http://www.ncvhs.hhs.gov/,* when available. Written

testimony (no more than 1–2 pages in length) can be submitted to Marietta Squire at *marietta.squire@cdc.hhs.gov,* phone: 301–458–4524. In order for written testimony to be included in the meeting summary, it must be submitted by April 30, 2009.

Additional program information as well as summaries of meetings and a roster of Committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: April 16, 2009.

James Scanlon,

Acting Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E9–9219 Filed 4–21–09; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–09–09BL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar PhD, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

The Epidemiology and Impact of Workplace Violence in Pennsylvania Teachers and Paraprofessionals—NEW—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Workplace violence (WPV) is a significant concern for employers and employees alike; every year in the U.S., WPV results in hundreds of deaths, nearly two million nonfatal injuries, and billions of dollars in costs. Historically, the education field has not been the focus of WPV research; however, the classroom is a workplace too. From 1999 to 2003, teachers were the victims of approximately 183,000 nonfatal crimes including 119,000 thefts and 65,000 violent crimes such as rape and assault.

Workplace violence is not limited to physical attacks; verbal threats, bullying, and harassment also produce psychological harm to teachers and school staff. A newer form of such violence is that of electronic aggression. The CDC defines the problem as: ''Any type of harassment or bullying (teasing, telling lies, making fun of someone, making rude or mean comments, spreading rumors, or making threatening or aggressive comments) that occurs through e-mail, a chat room, instant messaging, a Web site (including blogs) or text messaging.'' While a recent study found that 35% of young people had been the victims of electronic aggression, the impact of this in the workplace is relatively unknown. The extant evidence indicates that working in a school environment carries an excess risk for becoming a victim of some form of WPV; however, little is known about the incidence or risk factors for such.

The Occupational Safety and Health Act, Public Law 91–596 (section 20[a][1]) authorizes the National Institute for Occupational Safety and Health (NIOSH) to conduct research to advance the health and safety of workers. NIOSH is conducting a population-based, cross-sectional survey among teachers and paraprofessionals in the state of Pennsylvania. The goals of this study are (1) Estimate the number and prevalence proportions (rates) of physical, non-physical, and electronic WPV in teachers and paraprofessionals; (2) Identify the circumstances and most common risk factors for physical, non-physical, and electronic WPV in teachers and paraprofessionals; (3) Measure the impact of WPV on job satisfaction and quality of life.

NIOSH is proposing to conduct a population-based, cross-sectional survey among teachers and paraprofessionals in the state of Pennsylvania. Paper-and-pencil surveys will be mailed to potential participants through the Pittsburgh Federation of Teachers (PFT), Philadelphia Federation of Teachers (PA–AFT), and the Pennsylvania State Education Association (PSEA). Since approximately 90% of teachers and 65% of paraprofessionals in the state of Pennsylvania hold membership in one of these three unions and no known state-wide database exists that includes both teachers and paraprofessionals, a sample of eligible participants will be drawn using state-based union records.

A stratified random sample will be drawn to ensure representativeness on important dimensions such as gender of participant and urban-rural status of the school district. In conjunction with each participating union, study packets consisting of an introduction letter, paper-and-pencil survey, and non-response form will be mailed to eligible participant's home addresses. The questionnaire is a paper-and-pencil survey and provides information on the following categories: demographics, occupation, physical assault characteristics, non-physical assault characteristics, electronic aggression characteristics, job satisfaction, and quality of life.

The sample size for the cross-sectional survey is estimated to be approximately 6,450 teachers and paraprofessionals. This estimate is based on the number of reported teachers and paraprofessionals represented by the three unions participating in this study and on an 80% response rate that is comparable to the response rate of previously conducted surveys in similar populations. Pilot test data demonstrates that respondents should take approximately 30 minutes to complete the paper-and-pencil survey, resulting in an annualized burden estimate of 3,225 hours. Participation in the study is completely voluntary.

Once the study is completed, NIOSH will provide a copy of the final report to each participating union.

There are no costs to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Teachers & Support Personnel	6,450	1	0.5	3,225
Total				3,225

Dated: April 15, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–9156 Filed 4–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0571]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Minimum Data Elements (MDEs) for the National Breast and Cervical Cancer Early Detection Program (NBCCEDP)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Many cancer-related deaths in women could be avoided by increased utilization of appropriate screening and early detection tests for breast and cervical cancer. Mammography is extremely valuable as an early detection tool because it can detect breast cancer well before the woman can feel the lump, when the cancer is still in an early and more treatable stage. Similarly, a substantial proportion of cervical cancer-related deaths could be prevented through the detection and treatment of precancerous lesions. The Papanicolaou (Pap) test is the primary method of detecting both precancerous cervical lesions as well as invasive cervical cancer. Mammography and Pap tests are underused by women who have no source or no regular source of health care and women without health insurance.

Despite the availability and increased use of effective screening and early detection tests for breast and cervical cancers, the American Cancer Society (ACS) estimated that 182,460 new cases of breast cancer would be diagnosed among women in 2008, and that 40,480 women would die of this disease. The ACS also estimated that 11,070 new cases of invasive cervical cancer would be diagnosed in 2008, and that 3,870 women would die of this disease.

The CDC's National Breast and Cervical Cancer Early Detection Program (NBCCEDP) provides screening services to underserved women through cooperative agreements with 50 States, the District of Columbia, 5 U.S. Territories, and 12 American Indian/Alaska Native tribal programs. The program was established in response to the Breast and Cervical Cancer Mortality Prevention Act of 1990. Screening services include clinical breast examinations, mammograms and Pap tests, as well as timely and adequate diagnostic testing for abnormal results, and referrals to treatment for cancers detected. Awardees collect patient level screening and tracking data to manage the program and clinical services. A de-identified subset of data on patient demographics, screening tests and outcomes are reported by each awardee to CDC twice per year in the Minimum Data Elements (MDE) OMB No. 0920–0571, exp. 1/31/2010). Burden to respondents was significantly reduced in 2008 when the annual requirement to report infrastructure information (System for Technical Assistance Reporting, STAR), previously associated with collection of MDE information, was discontinued.

CDC plans to request OMB approval to collect MDE information for an additional three years. Because awardees already collect and aggregate data at the state, territory and tribal level, the additional burden of submitting data to CDC will be small. CDC will use the information to monitor and evaluate NBCCEDP awardees; improve the availability and quality of screening and diagnostic services for underserved women; develop outreach strategies for women who are never or rarely screened for breast and cervical cancer, and report program results to Congress and other legislative authorities. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents *	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NBCCEDP Grantees	68	2	4	544

Dated: April 15, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–9155 Filed 4–21–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0637]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 22, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0396. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Financial Disclosure by Clinical Investigators—(OMB Control Number 0910–0396)—Extension

Respondents are sponsors of marketing applications that contain clinical data from studies covered by the regulations. These sponsors represent pharmaceutical, biologic, and medical device firms. The applicant will incur reporting costs in order to comply with the final rule. Applicants will be required to submit, for example, the complete list of clinical investigators for each covered study, not employed by the applicant and/or sponsor of the covered study, and either certify to the absence of certain financial arrangements with clinical investigators or disclose the nature of those arrangements to FDA and the steps taken by the applicant or sponsor to minimize the potential for bias. The clinical investigator will have to supply information regarding financial interests or payments held in the sponsor of the covered study.

In the **Federal Register** of December 29, 2008 (73 FR 79493), FDA published a 60-day notice requesting public comment on the information collection provisions. Two comments were received, one comment expressed support for this information collection. The second comment raised several issues, first, the issue of the current cost the commenter incurs in the collection of Financial Disclosure and the estimate of substantial operating costs the commenter incurs in operating costs to support the collection of investigator financial information. FDA appreciates the comment and based on this new data, submitted by the commenter, will undertake a new evaluation whether there are capital costs or operating and maintenance costs associated with this collection of information. FDA also appreciates the comment concerning the definition of ''clinical investigator'' and will forward the comment to the FDA office responsible for this collection of information to consider in any future rulemaking. However, these definitions are codified in 21 CFR 54.2.

FDA also appreciates the comment regarding the use of Form FDA 1572 to minimize burden. However, 21 CFR 54.4 requires the use of Form FDA 3454 and Form FDA 3455. This comment will also be forwarded to the FDA office responsible for this collection of information to consider in any future rulemaking.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
54.4(a)(1) and (a)(2)—Form FDA 3454	1,000	1	1,000	5	5,000
54.4(a)(3)—Form FDA 3455	100	1	100	20	2,000
54.4(b)	46,000	.25	11,500	1	11,500
Total					18,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The sponsors of covered studies will be required to maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the applications. This time is consistent with the current recordkeeping requirements for other information related to marketing applications for human drugs, biologics, and medical devices. Currently, sponsors of covered studies must maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae. FDA estimates than an average of 15 minutes will be required for each recordkeeper to add this record to clinical investigators' file.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
54.6	1,000	1	1,000	.25	250
Total					250

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–9148 Filed 4–21–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Parent-Child Assistance Program (P–CAP) in the Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence—New

Since 2001, SAMHSA's Center for Substance Abuse Prevention has been operating a Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence which addresses FASD mainly by providing trainings and technical assistance; and developing and supporting systems of care that respond to FASD using effective evidence based practices and interventions.

Currently the integration of evidence-based practices into service delivery organizations is being accomplished through subcontracts. One such intervention which integrates prevention strategies into service delivery organizations is the Parent-Child Assistance Program (PCAP) targeting pregnant or postpartum women. The PCAP programs uses the following 12 data collection tools.

Description of Instruments/Activity for Parent-Child Assistance Program (P–CAP)

Instrument/activity	Description
At Baseline/Enrollment:	
CRSQ	The Community Referral Screening Questionnaire (CRSQ) is a screening form administered to individuals referred to PCAP. The purpose of the form is to determine eligibility for enrollment in PCAP.
ASI—Part A	The Alcohol Severity Index (ASI) Part A is an intake interview administered at client enrollment. The ASI Part A includes questions about past 30 day alcohol use, lifetime use, age at first use, month and year of last use, range of use (T–ACE), and use during pregnancy, thereby providing a thorough assessment of alcohol consumption.
ASI—Part B & Twin	The Alcohol Severity Index (ASI) Part B is an intake interview administered as soon as possible after the target child birth. The ASI Part B includes questions about the target child at birth and alcohol use during the pregnancy. If the target birth is of twins then the Twins Addendum form is administered.
Demographic Data	The Demographic Questionnaire is administered after client enrollment. The questionnaire includes race, educational attainment, martial status, and an alcohol assessment.
Process Monitoring:	
Weekly Advocate Time Summary	The PCAP Weekly Advocate Time Summary Sheet is administered on a weekly basis. The form tracks time spent on the phone, in person, or providing transportation to each client.
Monthly Updates	The Monthly Update form is administered on a monthly basis. The form records any changes in drug and alcohol use, pregnancy, child custody, and sources of income.

Instrument/activity	Description
Biannual Documentation of Progress (every 6 months).	The Biannual Documentation of Progress is administered every six months. The form documents changes in alcohol/drug treatment, abstinence from alcohol/drugs, birth control and pregnancy, connection to other services, and family stability and client activity.
At Exit:	
Exit ASI	The Exit ASI Follow-Up is administered at the end of the program, at 36 months. The Exit ASI uses a format that is identical to the Addiction Severity Index administered at intake, providing pre- and post-test data for the intervention.
Client Exit Close Out form	The Client Exit Close-Out Form documents the total number of months the client spent in PCAP, number of different advocates who worked with the client, and whether the client ever moved out of the area while enrolled in PCAP.
Ad hoc:	
Advocate Accounting of Tracing Activity on Missing Post-Exit Client.	The Advocate Accounting of Tracing Activity on Missing Post-Exit Client is used to track activity to locate a missing client. When a client is missing, the form is to be completed each month, instead of the Monthly Update form, until the missing post-exit client is brought in for an Exit Interview.
Lost Post-Exit Client Form	The Lost Post-Exit Client Form is used when the client is at least six months past her three year exit date in the program and has not completed the ASI exit interview. The form documents the reason the client has not completed the ASI exit interview.

Two PCAP subcontracts were awarded in February 2008. PCAP uses an intensive paraprofessional home visitation model to reduce risk behaviors in pregnant women with substance abuse problems. The primary goal of PCAP is to prevent future births of alcohol and drug exposed children to women who are at risk. The program uses a holistic case management approach, which is a complement to traditional substance abuse treatment. In addition to addressing alcohol and drug use, the program also aims at reducing other risk behaviors and addressing the health and social well being of mothers and their children.

At the initial client visit, the women receive a comprehensive assessment which includes an assessment for alcohol consumption, contraception use, and use of community services. At-risk women receive case management and every 4 months women are re-evaluated to determine their clinical goals. Counselors complete ''Documentation of Client Progress'' form every 6 months and a final ''Documentation of Client Progress'' at 36 months. In addition, the counselors complete a weekly advocate time sheet, summarizing their activities within the program. All forms are completed online using the Web-portal. All participating subcontractors will maintain identifiable information on clients for service delivery purposes but no identifiable information will be transmitted to SAMHSA.

The data collection is designed to evaluate the implementation of PCAP by measuring whether abstinence from alcohol is achieved and risk for alcohol-exposed births is eliminated.

ESTIMATED ANNUALIZED BURDEN HOURS

Instrument/activity	Number of respondents 2 sites	Number of responses per respondent	Average burden per response	Total burden hours per collection
At Baseline/Enrollment:				
CRSQ	190	1	0.08	15
ASI—Part A	190	1	2.75	523
ASI—Part B & Twin	190	1	0.25	47.5
Demographic Data	190	1	0.08	15
Process Monitoring:				
Weekly Advocate Time Summary	190	52	0.50	4,940
Monthly Updates	190	12	0.50	1,140
Biannual Documentation of Progress (every 6 months)	161	2	0.33	106
At Exit:				
Exit ASI	190	1	2.25	428
Client Exit Close Out form	161	1	0.25	40
Ad hoc:				
Advocate Accounting of Tracing Activity on Missing Post-Exit Client	29	1	0.25	7
Lost Post-Exit Client Form	29	1	0.25	7
Total	1,710	74	.....	7,269

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: April 13, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–9193 Filed 4–21–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Mandatory Guidelines for Federal Workplace Drug Testing Programs (OMB No. 0930–0158)—Extension

SAMHSA's Mandatory Guidelines for Federal Workplace Drug Testing Programs will request OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (69 FR 19644) dated April 13, 2004, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form approved by OMB three years ago is being resubmitted for OMB approval without any revision.

Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures. Collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the laboratory's testing procedures before arriving at the laboratory.

The NLCP application form has not been revised compared to the previous form.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Burden/ response (hrs.)	Number of responses	Total annual burden (hrs.)
Custody and Control Form:			
Donor	.08	7,096,000	567,680
Collector	.07	7,096,000	496,720
Laboratory	.05	7,096,000	354,800
Medical Review Officer	.05	7,096,000	354,800
Laboratory Application	3.00	3	9
Laboratory Inspection Checklist	3.00	100	300
Laboratory Recordkeeping	250.00	50	12,500
Total			1,786,809

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 and e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: April 13, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–9187 Filed 4–21–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Nutrition and Aging of Brain.

Date: June 9, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, National Institutes of Health, Gateway Building, Room 2C/212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National

Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *parsadaniana@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Aging and Economics.

Date: June 17, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, National Institutes of Health, Gateway Building, Room 2C/212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *ferrellrj@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel, Mitochondrial Antioxidants and Aging.

Date: June 19, 2009.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, National Institutes of Health, Gateway Building, Room 2C/212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2C/212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *parsadaniana@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9276 Filed 4–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 28–29, 2009.

Open: May 28, 2009, 10:30 a.m. to 4:45 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Other Administrative and Program Developments; and an Overview of the NINDS Intramural Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 28, 2009, 4:45 p.m. to 5:15 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: May 29, 2009, 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9225 Filed 4–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: May 27–28, 2009.

Closed: May 27, 2009, 6 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: May 28, 2009, 8 a.m. to 10 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah G Hirtz, MD, Acting Director, Clinical Trials Cluster, National Institute of Neurological Disorders and Stroke, National Institute of Health, 6001 Executive Blvd., Suite 2212, Bethesda, MD 20892. (301) 496–5821. *hirtz@ninds.nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on

campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 16, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–9236 Filed 4–21–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Refugee Resettlement Single-Source Program Expansion Supplement

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

Subject: Single-Source Program Expansion Supplement.

ACTION: Notice to Award a Single-Source Program Expansion Supplement to the North Dakota Department of Human Services (NDHS) under the North Dakota Wilson-Fish Program.

CFDA#: 93.583.

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $181,184 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered refugee assistance program for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, Trafficking Victims and Iraqi/Afghani SIV's. North Dakota is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, NDHS, to provide refugee cash assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the North Dakota Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: April 6, 2009.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E9–9269 Filed 4–21–09; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Vermont Refugee Resettlement Program

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Single-Source Program Expansion Supplement; Notice to Award a Single-Source Program Expansion Supplement to the U.S. Committee for Refugees and Immigrants—Vermont Refugee Resettlement Program (USCRI–VRRP) under the Vermont Wilson-Fish Program.

CFDA#: 93.583

Legislative Authority: The Refugee Act of 1980 as amended, Wilson-Fish Amendment, 8 U.S.C. 1522(e)(7); section 412(e)(7)(A) of the Immigration and Nationality Act.

Amount of Award: $414,041 supplement for current year.

Project Period: 09/30/2005–09/29/2010.

Justification for the Exception to Competition: The Wilson-Fish program is an alternative to the traditional State-administered refugee assistance program for providing integrated assistance and services to refugees, asylees, Amerasian Immigrants, Cuban and Haitian Entrants, Trafficking Victims and Iraqi/Afghani SIV's. Vermont is one of 12 sites that has chosen this alternative approach.

The supplemental funds will allow the grantee, USCRI–VRRP, to provide refugee cash assistance through the end of this fiscal year to eligible refugees (and others eligible for refugee benefits) under the Vermont Wilson-Fish Program.

The primary reason for the grantee's supplemental request is a higher number of arrivals than anticipated when the grantee's budget was submitted and approved last year. The Refugee Act of 1980 mandates that the Office of Refugee Resettlement (ORR) reimburse States and Wilson-Fish projects for the costs of cash and medical assistance for newly arriving refugees. Since 1991, ORR has reimbursed States and Wilson-Fish agencies for providing cash and medical assistance to eligible individuals during their first eight months in the United States.

Hence, the supplement is consistent with the purposes of the Wilson-Fish Program, the Refugee Act of 1980, and ORR policy.

FOR FURTHER INFORMATION CONTACT: Carl Rubenstein, Wilson-Fish Program Manager, Office of Refugee Resettlement, Aerospace Building, 8th Floor West, 901 D Street, SW., Washington, DC 20447. Telephone: 202–205–5933.

Dated: April 6, 2009.

David H. Siegel,

Acting Director, Office of Refugee Resettlement.

[FR Doc. E9–9282 Filed 4–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–824, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–824, Application for Action on an Approved

Application or Petition; OMB Control No. 1615–0044.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 22, 2009.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the OMB Control Number 1615–0044 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Action on an Approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. This information collection is used to request a duplicate approval notice, to notify and to verify to the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 43,772 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 18,209 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 17, 2009.

Kathryn Catania,

Management and Program Analyst, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–9243 Filed 4–21–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–644, Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N–644, Application for Posthumous Citizenship; OMB Control No. 1615–0059.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 22, 2009.

Written comments and suggestions regarding the item(s) contained in this notice, and especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office,111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail please add the OMB Control Number 1615–0059 in the subject box.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–644, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: April 17, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–9265 Filed 4–21–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Class III Gaming, Tribal Revenue Allocation Plans, Gaming on Trust Lands

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of information collections under the Paperwork Reduction Act; Comment request.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on three information collection requests which we plan to renew. The three collections are: Class III Gaming Procedures 25 CFR Part 291, 1076–0149; Tribal Revenue Allocation Plans 25 CFR Part 290, 1076–0152; and Gaming On Trust Lands Acquired After October 17, 1988, 25 CFR Part 292, 1076–0158.

DATES: Submit comments by June 22, 2009.

ADDRESSES: Comments should be sent to: Paula L. Hart, Office of Indian Gaming, Mail Stop 3657–MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Telephone: (202) 219–4066, Facsimile: (202) 273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Office of Indian Gaming is proceeding with this public comment period as the first step in obtaining an information collection renewal from the Office of Management and Budget (OMB). Each request contains: (1) Type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, and (6) reporting and recordkeeping requirements.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Class III Gaming Procedures

OMB Control Number: 1076–0149.

Type of review: Extension of a currently-approved collection.

Title: Class III Gaming Procedures, 25 CFR Part 291.

Summary: The collection of information will ensure that the provisions of the Indian Gaming Regulatory Act (IGRA), the relevant provisions of State laws, Federal law and the trust obligations of the United States are met when federally recognized Tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR Part 291, Class III Gaming Procedures, specify the information collection requirement. An Indian Tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: the name of the Tribe and name of the State; Tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0149). All information is collected when the Tribe makes a request for Class III gaming procedures. Annual reporting and recordkeeping burden for this collection of information is estimated to occur one time on an annual basis. The estimated number of annual requests is 12 Tribes seeking Class III gaming procedures. The estimated time to review instructions and complete each application is 320 hours. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 3,840 hours.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized Tribes.

Total Respondents: 12.

Response Hours per Application: 320.

Total Annual Burden Hours: 3,840 hours.

Tribal Revenue Allocation Plans

OMB Control Number: 1076–0152.

Type of review: Extension of a currently-approved collection.

Title: Tribal Revenue Allocation Plans, 25 CFR Part 290.

Summary: In order for Indian Tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification, and the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR Part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. An Indian Tribe must ask the Secretary to approve a Tribal Revenue Allocation Plan. The information to be collected includes: the name of the Tribe, Tribal documents, the allocation plan, and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0152). All information is collected when the Tribe submits a Tribal Revenue Allocation Plan. Annual reporting and recordkeeping burden for this collection of information is estimated to average between 75 and 100 hours for approximately 20 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 1,500 to 2,000 hours. We are using the higher estimate for purposes of estimating the public burden.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized Tribes.

Total Respondents: 20.

Total Annual Responses: 100.

Total Annual Burden Hours: 2,000 hours.

Gaming on Trust Lands Acquired After October 17, 1988

Type of review: Extension of a currently-approved collection.

Title: Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR Part 292.

OMB Control No. 1076–0158.

Summary: The collection of information will ensure that the provisions of IGRA, Federal law and the trust obligations of the United States are met when Federally recognized Tribes submit an application seeking a Secretarial determination that a gaming establishment on land acquired in trust

after October 17, 1988, and not exempt under one of the other statutory exemptions to the prohibition on gaming contained in IGRA Section 20, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0158). All information is collected when the Tribe makes a request for a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community. Annually, we expect about 2 Tribes to apply, seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community. The estimated time to review instructions and complete each application is 2,000 hours. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 4,000 hours.

Frequency of Collection: A one-time collection.

Description of Respondents: Federally recognized Tribes.

Total Annual Responses: 2.

Response Burden Hours per Application: 1,000.

Total Annual Burden Hours: 2,000 hours.

Request for Comments

The BIA solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond.

Any public comments received will be addressed in the BIA's submission of the information collect request to OMB.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3657, during the hours of 9 a.m.–4 p.m., EST Monday through Friday except for legal holidays. Please note that all comments received will be available for public review 2 weeks after comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

Dated: April 15, 2009.

Alvin Foster,

Deputy Chief Information Officer—Indian Affairs.

[FR Doc. E9–9267 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2009–OMM–0004]

MMS Information Collection Activity: 1010–0071, Relief or Reduction in Royalty Rates: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0071).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR Part 203, Relief or Reduction in Royalty Rates.

DATES: Submit written comments by June 22, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787–1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- *Electronically:* go to *http://www.regulations.gov.* Under the tab ''More Search Options,'' click Advanced Docket Search, then select ''Minerals Management Service'' from the agency drop-down menu, then click ''submit.'' In the Docket ID column, select MMS–2009–OMM–0004 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Information Collection 1010–0071'' in your subject line and mark your message for return receipt. Include your name and return address in your message text.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 203, Relief or Reduction in Royalty Rates.

OMB Control Number: 1010–0071.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic without royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination must be done on a case-by-case basis. Production from leases in the same water depth and area issued after November 28, 2000, also can qualify for royalty suspension in addition to any that may be included in their lease terms.

In addition, the Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost

of services that confer special benefits. Under the Department of the Interior's (DOI) implementing policy, the Minerals Management Service (MMS) is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 30 CFR 203.3 states that, ''We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief.''

The MMS uses the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal Government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and 30 CFR 203.63(b) and 30 CFR 250.197. No items of a sensitive nature are collected.

Responses are mandatory or are required to obtain or retain a benefit.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 4,721 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 203	Reporting or recordkeeping requirement 30 CFR Part 203	Hour burden application fees
2(b); 3; 4; 70	These sections contain general references to submitting reports, applications, requests, copies, demonstrating qualifications, for MMS approval—burdens covered under specific requirements.	0.
31(c)	Request a refund of or recoup royalties from qualified ultra-deep wells	1.
35(d); 44(e)	Request to extend the deadline for beginning production with required supporting documentation.	1.
35(a); 44(a); 47(a)	Notify MMS of intent to begin drilling	1.
35(c), (d); 44(b), (d), (e)	Notify MMS that production has begun, request confirmation of the size of RSV, provide supporting documentation.	2.
41(d)	Request a refund of or recoup royalties from qualified wells >200 meters but <400 meters	1.
46	Provide data from well to confirm and attest well drilled was an unsuccessful certified well with supporting documentation and request supplement.	8.
49(b)	Notify MMS of decision to exercise option to replace one set of deep gas royalty suspension terms for another set of such terms. NOTE: The MMS SOL requires that the regulation stay for legacy purposes only. Last time any respondent could use was 2004.	0.
51; 83; 84	Application—leases that generate earnings that cannot sustain continued production (end-of-life lease) and required supporting documentation.	100. Application = $8,000.* Audit = $12,500.
52	Demonstrate ability to qualify for royalty relief or to re-qualify	1.
55	Renounce relief arrangement (end-of-life) (seldom, if ever will be used; minimal burden to prepare letter).	1.
61; 62; 64; 65; 71; 83; 85–89.	Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project) and required supporting documentation.	2,000. Application = $19,500.
61; 62; 64; 65; 203.71; 203.83; 203.85–89.	Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00 that have not produced (pre-act or post-2000 deep water leases) and required supporting documentation.	2,000. Application = $34,000.* Audit = $37,500.
61; 62; 64; 65; 71; 83; 85–89.	Application—preview assessment (seldom if ever will be used as applicants generally opt for binding determination by MMS instead) and required supporting documentation.	Application = $34,000.
70; 81; 90; 91	Submit fabricator's confirmation report; extension justification	20.
70; 81; 90; 92	Submit post-production development report; extension justification	50.
74; 75	Redetermination and required supporting documentation	500. Application = $16,000.*
77	Renounce relief arrangement (deep water) (seldom, if ever will be used; minimal burden to prepare letter).	1.
79(c)	Request extension of deadline to start construction	2.
80	Application—apart from formal programs for royalty relief for a marginal producing lease (Special Case Relief) and required supporting documentation.	250. Application = $8,000.** Audit = $10,000.
80	Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (Special Case Relief) and required supporting documentation.	*GOM*—1,000. Application = $19,500.** Audit = $20,000. *POCS*—40. Application = $6,500.***
81; 83–90	Required reports; extension justification	Burden included with applications.

Citation 30 CFR 203	Reporting or recordkeeping requirement 30 CFR Part 203	Hour burden application fees
81(d)	Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	8.
83	Application—short form to add or assign pre-Act lease and required supporting documentation.	40 Application = $1,000.

* CPA certification expense burden also imposed on applicant.
** These applications currently do not have a set fee since they are done on a case-by-case basis. In the past 11 years, three unique applications have been submitted and the respondents were charged approximately $8,000 per application, and $19,500 respectively.

Note: Applications include numerous items such as: transmittal letters, letters of request, modifications to applications, reapplications, etc.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are two non-hour costs associated with this information collection. The currently approved non-hour cost burden is $280,670. This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is $145,670 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants. Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate approximately three submissions, during the information collection extension, at an average cost of $45,000 per report, for a total estimated annual cost burden of $135,000. We have not identified any other non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: April 10, 2009.

E.P. Danenberger,

Chief, Office of Offshore Regulatory Programs.

[FR Doc. E9–9194 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N0084] [41510–1261-0000–4A]

Proposed Information Collection; Economic Valuation and Visitor Satisfaction Survey, Crystal River National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Your comments must be received by June 22, 2009.

ADDRESSES: Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, contact Hope Grey by mail or e-

mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Crystal River National Wildlife Refuge is developing a Comprehensive Conservation Plan (CCP), a 15–year planning document, to chart the course of future management options on the refuge. The refuge was established in 1983 for the purpose of protecting the Florida manatee, an endangered species.

Citrus County, where the refuge is located, is heavily dependent on manatee ecotourism as a source of tourist revenue. Local tour operators conduct manatee-human interactions in the form of ''swim with'' the manatee programs, which have become enormously popular over the years. Citrus County widely advertises and encourages visitors to come from around the world to have this unique experience. We manage ecotourism activities cooperatively with local tour operators through special use permits that impose conditions on activities conducted within the refuge. One condition is that operators must provide educational materials to their customers related to manatee-human interactions.

We have signed a challenge cost-share agreement with the Department of Community Services, Citrus County, to conduct a survey to obtain information to:

(1) Evaluate present and future use levels by the public, and

(2) Determine the quality and viability of manatee ecotourism experiences.

The county will contract with a private consulting firm to develop and conduct the survey, analyze the data, and provide the results to the Service and the county. The proposed survey will gather information from visitors regarding their experience while visiting Citrus County and the purpose for their visit, including specific questions related to manatee viewing. The report will not include any personal information about the participants and will only include information regarding the present and future public use levels on the refuge, as well as a determination of the quality and viability of manatee ecotourism experiences. The information collected will provide data to:

(1) Support future refuge decisions to ensure protection of manatees while providing quality experiences for visitors.

(2) Aid local business interests in providing quality ecotourism experiences.

II. Data

OMB Control Number: None. This is a new collection.

Title: Economic Valuation and Visitor Satisfaction Survey, Crystal River National Wildlife Refuge.

Service Form Number(s): None.

Type of Request: New.

Affected Public: Visitors to Crystal River National Wildlife Refuge and Citrus County, Florida.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Estimated Annual Number of Respondents: 500.

Estimated Total Annual Responses: 500.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 125.

III. Request for Comments

We invite comments concerning this IC on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 15, 2009

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E9–9284 Filed 4–21–09; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N0071]; [10120–1113–0000–F5]

Endangered Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of applications for permits; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), invite the public to comment on the following applications for permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act), which requires that we invite public comment on these permit applications.

DATES: We must receive your written data or comments by May 22, 2009.

ADDRESSES: Program Manager, Endangered Species, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above address or by telephone (503–231–2071) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicants have applied for a new scientific research permit or interstate commerce permit, or to amend an existing permit, to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We solicit review and comment from local, State, and Federal agencies and the public.

Permit No. TE–001822

Applicant: Willamette National Forest, Oregon.

The applicant requests an amendment to an existing scientific research permit to take (trap, mark, and release) the Oregon chub (*Oregonichthys crameri*) in conjunction with research in the State of Oregon, for the purpose of enhancing its survival. This permit currently covers take (harass by survey, angling, capture, handle, mark, measure, translocate, and release) of the bull trout (*Salvelinus confluentus*).

Permit No. TE–210255

Applicant: Montana Department of Fish, Wildlife, and Parks.

The applicant requests a new scientific research permit to take (capture, handle, measure, and release)

the Kootenai River population of the white sturgeon (*Acipenser transmontanus*) in conjunction with research in the State of Montana, for the purpose of enhancing its survival.

Permit No. TE–096741

Applicant: Pacific Naval Facilities Engineering Command, Hawaii.

The applicant requests an amendment to an existing scientific research permit to take (survey, collect eggs or larvae, rear in captivity, photograph, release, and collect voucher specimens) the Hawaiian picture-wing flies *Drosophila aglaia, D. hemipeza, D. montgomeryi, D. obatai, D. substenoptera, D. tarphytrichia,* and *D. musaphilia* in conjunction with research on the islands of Oahu and Kauai, Hawaii, for the purpose of enhancing their survival. This permit currently covers removal and reduction to possession of *Abutilon menziesii* (ko'oloa'ula), *Abutilon sandwicense* (no common name), *Achyranthes splendens var. rotundata* (round-leaved chaff flower), *Alectryon macrococcus var. micrococcus* (mahoe), *Bonamia menziesii* (no common name), *Chamaesyce kuwaleana* (akoko), *Chamaesyce skottsbergii var. kalaeloana* ('Ewa Plains 'akoko), *Cyperus trachysanthos* (puukaa), *Flueggea neowawraea* (mehamehame), *Hedyotis parvula* (no common name), *Lepidium arbuscula* (anaunau), *Lipochaeta lobata var. leptophylla* (nehe), *Lipochaeta tenuifolia* (nehe), *Lobelia niihauensis* (no common name), *Marsilea villosa* (ihi'ihi), *Melicope pallida* (alani), *Melicope saint-johnii* (alani), *Neraudia angulata* (no common name), *Nototrichium humile* (kului), *Schiedea hookeri* (no common name), *Tetramolopium filiforme* (no common name), *Tetramolopium lepidotum* ssp. *lepidotum* (no common name), and *Viola chamissoniana* ssp. *chamissoniana* (pamakani), for which we originally published a notice in the **Federal Register** on January 7, 2005 (70 FR 1456).

Permit No. TE–068803

Applicant: Jerry Lynn Kinser, Conroe, Texas.

The applicant requests a permit to purchase, in interstate commerce, two male captive bred Hawaiian (=nene) geese (*Branta* [=*Nesochen*] *sandvicensis*) for the purpose of enhancing their propagation and survival. This notification covers activities conducted by the applicant over the next 5 years.

Permit No. TE–212061

Applicant: Paul C. Hammond, Philomath, Oregon.

The applicant requests a new scientific research permit to take (capture, handle, and release) the Fender's blue butterfly (*Icaricia icarioides fenderi*) in conjunction with research in the State of Oregon, for the purpose of enhancing its survival.

Public Comments

Please refer to the permit number for the application when submitting comments.

We solicit public review and comment on these recovery and interstate commerce permit applications. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: April 13, 2009.

David J. Wesley,

Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. E9–9154 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Gaming Amendment.

SUMMARY: This notice publishes an Approval of the Third Amendment to Tribal-State Compact for Technical Changes to Class III Video Games of Chance on the Red Lake Band of Chippewa Reservation.

DATES: *Effective Date:* April 22, 2009.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment allows for technical changes to the Compact that address the technical advances that have occurred in the market with regard to slot machines and sets in place the technical standards for gaming devices that accept coin, currency or cashless tickets and issue cashless tickets.

Dated: April 13, 2009.

George T. Skibine,

Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–9263 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Class III Gaming Compact taking effect.

SUMMARY: This publishes notice of a Tribal-State Class III Gaming Compact taking effect. The Compact is between the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan and the State of Michigan and provides for the conduct of Tribal Class III Gaming by the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians of Michigan.

DATES: *Effective Date:* April 22, 2009.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact is entered into to fulfill the purpose and intent of IGRA by providing for Tribal gaming as a means of generating Tribal revenues, thereby promoting Tribal economic development, Tribal self-sufficiency and a strong Tribal government. This Compact lists the games that are authorized for play by the Tribe; describes the eligible Indian lands where the Tribe may conduct gaming; lists the regulations to be followed in order to conduct Class III gaming, as well as, the regulations to

provide services to the gaming facility; and provides for dispute resolution over any breaches of this Compact.

Dated: April 13, 2009.

George T. Skibine,

Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–9260 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State compact.

SUMMARY: This notice publishes the approval of the Seventh Amendment to the Agreement between the Crow Tribe of Montana and the State of Montana Concerning Class III Gaming.

DATES: *Effective Date:* April 22, 2009.

FOR FURTHER INFORMATION CONTACT: Paula Hart, Acting Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Amendment increases the number of Class III video gambling machines available for play to 400; allows for Tribal gaming operations to be located anywhere on the reservation; increases the prize limit for Class III gaming to $2,000.00; increases the wager limit on Tribally owned machines to $5.00; and sets out the technical and internal control standards for Class III gaming machines on the reservation.

Dated: April 15, 2009.

George T. Skibine,

Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–9258 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of rate adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: *Effective Date:* The irrigation assessment rates shown in the tables as final are effective as of January 1, 2009.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project or facility is located.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rate Adjustment was published in the **Federal Register** on October 30, 2008 (73 FR 64629) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended December 29, 2008.

Did the BIA defer or change any proposed rate increases?

Yes. At the Fort Belknap, Fort Peck, and Uintah Irrigation Projects, the project operations and maintenance (O&M) has been contracted by the water users and/or tribes. Based on the budget submitted by the water users at Fort Belknap, the rate was only raised to $14.75 instead of $20.00 per acre. Based on the budget submitted by the water users at Fort Peck, the rate was only raised to $24.00 instead of $25.75 per acre. Based on the budget submitted by the water users at Uintah, the rate is raised to $15.00 instead of the previously proposed $13.70 per acre.

Did the BIA receive any comments on the proposed irrigation assessment rate adjustments?

Written comments were received related to the proposed rate adjustments for the San Carlos Irrigation Project—Joint Works, the Wapato Irrigation Project, and the Wind River Irrigation Project.

What issues were of concern to the commenters?

Individuals and entities commenting on the proposed rates raised concerns about one or more of the following issues: (1) How funds are expended for O&M costs; (2) the BIA's trust responsibility for projects; (3) the BIA's responsibility to enhance idle land tracts to make them productive; (4) the efficiencies of contracting with water users groups to perform O&M to save costs; and (5) how rate increases impact the local agricultural economy and individual land owners.

Commenters raised concerns specific to the Wind River Irrigation Project (WRIP), asserting that: (1) The BIA is responsible for delivery of the full amount of water quantified in the Big Horn Decree; (2) the WRIP should not be considered self-supporting for irrigation O&M funding and requires Federal assistance; and (3) the Eastern Shoshone and Northern Arapaho Tribes and their members should not be subsidizing non-Indian lessee water users.

A commenter raised concerns specific to the San Carlos Irrigation Project—Joint Works, asserting that: (1) The number of BIA personnel required to operate and maintain the project is too high; (2) the BIA should maintain the project wells; (3) anticipated project expenses for FY 2010 will be higher; and (4) the BIA is budgeting too much for emergency reserves.

The Yakama Nation raised concerns specific to the Wapato Irrigation Project, stating that the Yakama Nation does not believe that the BIA has authority to charge the Yakama Nation and its members irrigation O&M charges as provided in this notice.

How does the BIA respond to concerns regarding how funds are expended for O&M costs?

The BIA considers the following expenses when determining an irrigation project's budget: Project personnel costs; materials and supplies; vehicle and equipment repairs; equipment; capitalization expenses; acquisition expenses; rehabilitation costs; maintenance of a reserve fund for contingencies or emergencies; and other expenses that we determine are

necessary to properly operate and maintain an irrigation project. Personnel costs include the cost of hiring employees, which includes a mandatory background check, as well as the costs of salaries and employee benefits including Social Security and health care.

One common misconception water users have is that all salary costs are administrative and are not used to provide services directly related to operation and maintenance of irrigation facilities. Only a portion of each project's budget is for administrative costs. The administrative costs for a project include office costs, office staff (accounting and clerical), and a portion of the project manager's salary. Non-administrative costs are the cost to operate and maintain the irrigation project or facility. O&M workers perform O&M work, and thus their salaries are considered O&M costs, not administrative costs. All projects need essential personnel to operate and maintain the project, including a project manager, accounting staff, and irrigation system operators (ditchriders).

There have been concerns raised that irrigation project funds have been used to pay BIA staff members who are not performing work related to operation and maintenance of irrigation facilities. This is not in accordance with applicable law and regulations, and the BIA is committed to ensuring that any such payments do not occur. Central Office staff from the BIA's Irrigation, Power, and Safety of Dams Program review expenditures routinely to ensure compliance with this policy. At some projects, non-irrigation staff assist the projects and are not being paid out of irrigation funds. For example, at the Wind River Irrigation Project, the Deputy Superintendent—Trust Services acted as the project manager and was not paid out of irrigation funding.

How does the BIA respond to comments regarding the BIA's trust responsibility in relation to projects?

The BIA disagrees that establishing irrigation assessments in accordance with applicable law violates any trust duty. The BIA has no trust obligation to operate and maintain irrigation projects. *See, e.g.*, *Grey* v. *United States*, 21 Cl. Ct. 285 (1990), *aff'd*, 935 F.2d 281 (Fed. Cir. 1991), *cert. denied*, 502 U.S. 1057 (1992). The BIA, pursuant to 25 U.S.C. section 381 *et seq.* and 25 CFR Part 171, has the responsibility to administer constructed projects, set rates, collect assessments, and make decisions regarding water delivery. The BIA must collect O&M assessments to operate and maintain the irrigation infrastructure on its projects. Over time, the costs of operating and maintaining these projects increases, and rates must be adjusted accordingly to enable the BIA to continue to provide irrigation services. Raising rates to reflect the full costs associated with operating and maintaining projects is essential because O&M rates are the only consistent source of funding for the BIA's irrigation projects.

How does the BIA respond to comments regarding the BIA's trust responsibility to enhance idle tracts to make them productive?

As stated in the answer to the preceding question, the BIA has no trust obligation to operate and maintain irrigation projects. Likewise, the BIA has no obligation to enhance idle tracks of land within an irrigation project. However, recognizing the potential benefits to projects from such enhancements, the updated Irrigation O&M regulations (25 CFR 171.610) provide for an incentive to potential lessees who want to lease project land that is not being farmed (idle land). The lessee is eligible to enter into an Incentive Agreement with BIA. Under such an Incentive Agreement, BIA is able to waive O&M fees for up to three years while improvements are made to bring lands that are currently idle back into production. This feature provides benefits to landowners, who can more readily lease their lands; to lessees, who experience reduced costs associated with bringing lands back into production through reduced or waived O&M assessments; and to the projects, which will realize a more stable and productive land base.

How does the BIA respond to comments regarding the efficiencies of contracting with water user associations to perform O&M to save costs?

The BIA remains committed to work with all project water users to review and develop options for cost savings. If the water users believe that they can perform O&M functions more efficiently and effectively, the BIA will consider proposals and work with the appropriate parties regarding the potential to facilitate the transfer of O&M functions through a contract or other agreement.

How does the BIA respond to concerns regarding the impact of irrigation assessment rate increases on local agricultural economies and individual land owners?

The BIA's projects are important economic contributors to the local communities they serve. These projects contribute millions of dollars in crop value annually. Historically, the BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users. This past practice resulted in a rate deficiency at some irrigation projects. The BIA does not have discretionary funds to subsidize irrigation projects. Funding to operate and maintain these projects needs to come from revenues from the water users served by those projects.

The BIA's irrigation program has been the subject of several Office of Inspector General (OIG) and GAO audits. In the most recent OIG audit, No. 96–I–641, March 1996, the OIG concluded: ''Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering irrigation water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of project operation.'' A previous OIG audit performed on one of the BIA's largest irrigation projects, the Wapato Indian Irrigation Project, No. 95–I–1402, September 1995, reached the same conclusion.

To address the issues noted in these audits, the BIA must systematically review and evaluate irrigation assessment rates and adjust them, when necessary, to reflect the full costs to operate and perform all appropriate maintenance on the irrigation project or facility infrastructure to ensure safe and reliable operation. If this review and adjustment is not accomplished, a rate deficiency can accumulate over time. Rate deficiencies force the BIA to raise irrigation assessment rates in larger increments over shorter periods of time than would have been otherwise necessary.

The following comments are specific to the Wind River Irrigation Project (WRIP):

How does the BIA respond to concerns regarding the BIA's responsibility for delivery of the full amount of water quantified in the Big Horn Decree, as BIA only delivers 40 percent of the water quantified?

This notice only pertains to the water delivered to WRIP, which is approximately 40 percent of the Eastern Shoshone and Northern Arapaho Tribes' water right quantified under the Big Horn Decree. The BIA delivers the

amount of water that it has the capacity to deliver and is requested for use through the WRIP. The balance of the Tribes' water right is available for future uses and not affected by this notice.

How does the BIA respond to the concern that the WRIP should not be considered self-supporting for irrigation O&M funding and requires Federal assistance?

During some periods in the past, the BIA provided limited appropriated funds to irrigation projects to assist the projects with their O&M. At this time the BIA does not have discretionary funding available to subsidize O&M costs. Without necessary rate increases, the lack of adequate O&M funds could result in the inability of the project to maintain irrigation system components and deliver water.

How does the BIA respond to comments that the Shoshone and Arapaho Tribes and Tribal members should not be subsidizing the non-Indians?

This comment implies that Tribes and Tribal members are subsidizing non-Indians by paying for the O&M on lands leased by non-Indians. This is incorrect. Irrigation O&M for lands leased by others, Indian or non-Indian, are paid by the lessee, not the land owner.

The following comments are specific to the San Carlos Irrigation Project—Joint Works:

How does the BIA respond to the issue raised by users of the San Carlos Irrigation Project—Joint Works regarding the number of BIA personnel required to operate and maintain the project and the decision to lower the grade of the Supervisory Civil Engineer and make the position part time, as well as to abolish one Irrigation System Operator?

The Supervisory Civil Engineer position is typically responsible for management of the BIA irrigation employees and the irrigation system, including performing engineering analysis of system needs. As the BIA owns the entire San Carlos Irrigation Project—Joint Works, a Supervisory Civil Engineer will still be necessary to exercise oversight responsibility over the Joint Control Board to ensure that O&M is carried out in compliance with Government Standards.

In addition, the BIA is still responsible for ''Scheduling and Delivery'' of water, and based on workload projections, 3 Irrigation System Operators are needed in order to properly manage and schedule water.

How does the BIA respond to the issue raised by users of the San Carlos Irrigation Project—Joint Works regarding who is to manage the project's wells, and whether this can be changed in order to reduce anticipated FY 2010 project expenses?

The current agreement requires the BIA to continue maintenance of project wells until such time as they become a District Rehabilitation Responsibility project as defined in sections 9.1 and 9.4 of the Joint Control Board (JCB) Agreement. It may at some point prove feasible to transfer this responsibility to the JCB that has taken over portions of the project. However, as the agreement between the BIA and the JCB has yet to be implemented—a task the parties of the JCB rejected during settlement negotiations—it makes little sense to amend the agreement prior to implementation.

How does the BIA respond to concerns raised regarding amount of the emergency reserve for the project?

This concern is based on the preceding questions, so the BIA does not agree that the amount of the emergency reserve fund should be adjusted. The reserve funds are to prepare for events or emergencies which might interrupt the delivery of irrigation water and are required for BIA irrigation projects. The BIA recommends all projects follow U.S. Bureau of Reclamation guidelines to determine the amount of the reserve fund. The amount is based on a percentage of the annual O&M revenue funds collected by the project each year. The amount proposed for the San Carlos Irrigation Project—Joint Works is within the recommended guidelines.

The following comment is specific to the Wapato Irrigation Project:

How does the BIA respond to the Yakama Nation's objection to the BIA's policy of charging the Yakama Nation and its members irrigation O&M charges regardless of whether the parcel is producing adequate funds from agriculture to pay the O&M?

The Yakama Nation, which is served by the Wapato Irrigation Project, has an administrative appeal pending regarding the BIA's policy of setting irrigation assessment rates on assessable lands within BIA irrigation projects. The BIA's position is that we have statutory authority to establish the rates provided for under this notice.

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage of one of our irrigation projects, or if you have a carriage agreement with one of our irrigation projects.

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov*.

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation projects.

Project name	Project/agency contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.	
Flathead Irrigation Project	Chuck Courville, Superintendent, John Plouffe, Acting Irrigation Manager, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, MT 59855–0040, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Vacant, Supervisory General Engineer, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–2301.

Project name	Project/agency contacts
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.
Rocky Mountain Region Contacts	
Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Ted Hall, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Frank Merchant, Acting Superintendent, Vacant, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Judy Gray, Superintendent, Vacant, Irrigation Project Manager, (Project Operations and Mgmt Contracted by Tribes), R.R. 1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–2905, Irrigation Project Manager.
Fort Peck Irrigation Project	Florence White Eagle, Superintendent, P.O. Box 637, Poplar, MT 59255, Richard Kurtz, Irrigation Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Manager.
Wind River Irrigation Project	Ed Lone Fight, Superintendent, Sheridan Nicholas, Irrigation Project Manager, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Acting Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	Vacant, Superintendent, John Formea, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Engineer.
Western Region Contacts	
Allen Anspach, Regional Director, Bureau of Indian Affairs, Western Regional Office, Two Arizona Center, 400 N. 5th Street, 12th floor, Phoenix, Arizona 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Janice Staudte, Superintendent, Ted Henry, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–0569.
Fort Yuma Irrigation Project	Raymond Fry, Superintendent, P.O. Box 11000, Yuma, AZ 85366, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works.	Bryan Bowker, Project Manager, Augie Fisher, Acting Supervisory General Engineer, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6216.
San Carlos Irrigation Project Indian Works.	Cecilia Martinez, Superintendent, Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Daniel Picard, Superintendent, Karnel Murdock, Acting Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4341.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

What irrigation assessments or charges are adjusted by this notice?

The rate table below contains the current rates for all irrigation projects where we recover costs for operation and maintenance. The table also contains the final rates for the 2009 season and subsequent years where applicable. An asterisk immediately following the name of the project notes the irrigation projects where rates are adjusted for 2009.

Project name	Rate category	Final 2008 rate	Final 2009 rate	Final 2010 rate
Northwest Region Rate Table				
Flathead Irrigation Project* (See Note #1)	Basic per acre—A	$23.45	$23.45	$23.45
	Basic per acre—B	10.75	10.75	11.75
	Minimum Charge per tract	65.00	65.00	65.00
Fort Hall Irrigation Project*	Basic per acre	31.00	40.50	To be determined
	Minimum Charge per tract	27.00	30.00	
Fort Hall Irrigation Project—Minor Units*	Basic per acre	21.00	21.00	
	Minimum Charge per tract	27.00	30.00	
Fort Hall Irrigation Project—Michaud*	Basic per acre	39.75	41.50	
	Pressure per acre	55.50	58.00	
	Minimum Charge per tract	27.00	30.00	
	Minimum Charge for farm unit/land tracts up to one acre.	14.00	15.00	

Project name	Rate category	Final 2008 rate	Final 2009 rate	Final 2010 rate
	Farm unit/land tracts over one acre—per acre.	14.00	15.00	
Wapato Irrigation Project—Toppenish/Simcoe Units*.	Minimum Charge per tract	14.00	15.00	
	Basic per acre	14.00	15.00	
Wapato Irrigation Project—Ahtanum Units*	Minimum Charge per tract	14.00	15.00	
	Basic per acre	14.00	15.00	
Wapato Irrigation Project—Satus Unit*	Minimum Charge per tract	55.00	58.00	
	''A'' Basic per acre	55.00	58.00	
	''B'' Basic per acre	65.00	68.00	
Wapato Irrigation Project—Additional Works*	Minimum Charge per tract	60.00	63.00	
	Basic per acre	60.00	63.00	
Wapato Irrigation Project—Water Rental*	Minimum Charge	67.00	70.00	
	Basic per acre	67.00	70.00	

Project name	Rate category	Final 2008 rate	Final 2009 rate
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project*	Basic-per acre	$17.00	$18.00
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units).	Basic-per acre	20.80	20.80
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units).	Basic-per acre	20.50	20.50
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project*	Basic-per acre	13.88	14.75
Fort Peck Irrigation Project*	Basic-per acre	22.00	24.00
Wind River Irrigation Project *	Basic-per acre	16.00	18.00
Wind River Irrigation Project—*LeClair District	Basic-per acre	17.00	19.00
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	50.00	50.00
	Basic-per acre	15.00	15.00

Project name	Rate category	Final 2008 rate	Final 2009 rate	Final 2010 rate	Final 2011 rate
Western Region Rate Table					
Colorado River* Irrigation Project	Basic per acre up to 5.75 acre-feet	$47.00	$51.00	$52.50	$54.00.
	Excess Water per acre-foot over 5.75 acre-feet.	17.00	17.00	To be determined	.....
Duck Valley Irrigation Project	Basic per acre	5.30	5.30	To be determined	To be determined.
Fort Yuma* Irrigation Project (See Note #2).	Basic per acre up to 5.0 acre-feet	77.00	77.00	To be determined	To be determined.
	Excess Water per acre-foot over 5.0 acre-feet.	14.00	14.00		
	Basic per acre up to 5.0 acre-feet (Ranch 5).	28.00	77.00		
San Carlos Irrigation Project (Joint Works) (See Note #3).	Basic per acre	21.00	21.00	21.00	To be determined.
San Carlos Irrigation Project (Indian Works).	Basic per acre	57.00	57.00	To be determined	To be determined.
Uintah Irrigation Project*	Basic per acre	12.50	15.00		
	Minimum Bill	25.00	25.00		
Walker River Irrigation Project* (See Note #4).	Indian per acre	$13.00	$16.00	$19.00	$22.00.
	non-Indian per acre	16.00	16.00	19.00	22.00.

* Notes irrigation projects where rates are proposed for adjustment.

Note #1—The 2009 rate was established by final notice published in the **Federal Register** on June 5, 2008 (Vol. 73, No. 109, page 32046). The 2010 rate is final by this notice.

Note #2—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2009 remains unchanged at $70.00/acre. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2009 BIA rate remains unchanged at $7.00/acre. In 2009, the BOR rate for ''Ranch 5'' will be increased from $28.00/acre to $70.00/acre, and BIA will begin charging the $7.00/acre administrative fee on ''Ranch 5'' acreage.

Note #3—The 2009 rate was established by final notice published in the **Federal Register** on April 20, 2007 (Vol. 72, No. 76, page 19954).

Note #4—The 2009 rate was established by final notice published in the **Federal Register** on June 5, 2008 (Vol. 73, No. 109, page 32047). The 2010 rate is final through this notice.

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues related to water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by Project, Agency, and Regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) should the proposed rate adjustments be implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish ''a rule of particular applicability relating to rates.'' 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant ''takings'' implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires August 31, 2009.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Information Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Dated: April 13, 2009.

George Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–9277 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N0067; 40120–1113–0000–C2]

Technical Agency Draft Recovery Plan for the Endangered St. Andrew Beach Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and opening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the technical agency draft recovery plan for the St. Andrew beach mouse (*Peromyscus polionotus peninsularis*). This technical agency draft recovery plan includes specific recovery objectives and criteria to be met in order to reclassify this species to threatened status and delist it under the Endangered Species Act of 1973, as amended (Act). We request review and comment on this technical agency draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, comments on the technical agency draft recovery plan must be received on or before June 22, 2009.

ADDRESSES: If you wish to review this technical agency draft recovery plan, you may obtain a copy by contacting Janet Mizzi, U.S. Fish and Wildlife Service, 1601 Balboa Ave, Panama City, FL 32405, tel. (850) 769–0552, or by visiting either the Service's recovery plan Web site at *http://endangered.fws.gov/recovery/index.html#plans* or the Panama City Field Office Web site at *http://www.fws.gov/panamacity/*. If you wish to comment, you may submit your comments by one of the following methods:

1. You may submit written comments and materials to Janet Mizzi, at the above address.

2. You may hand-deliver written comments to our Panama City Field Office, at the above address.

3. You may fax your comments to (850) 763–2177.

4. You may send comments by e-mail to *janet_mizzi@fws.gov*. For directions on submitting comments electronically, see the ''Public Comments Solicited'' section.

FOR FURTHER INFORMATION CONTACT: Janet Mizzi at the above addresses or telephone: (850) 769–0552, ext. 247.

SUPPLEMENTARY INFORMATION:

Background

The St. Andrew beach mouse was listed as endangered on December 18, 1998 (63 FR 70053). The St. Andrew beach mouse is one of five subspecies of beach mice that inhabit the northern Gulf of Mexico coast (James 1992). Beach mice are fossorial creatures that inhabit the complex of coastal dune systems composed of the primary and secondary dunes and adjacent inland scrub dunes (Blair 1951, Bowen 1968, Holliman 1983, Holler 1992, James 1992, Moyers *et al.* 1996, Sneckenberger 2001). The beach mouse subspecies are differentiated from each other by their non-overlapping geographic distributions and pelage coloration (Hipes *et al.* 2000).

Currently, there are only two known core populations of the St. Andrew beach mouse, which occur in Bay and Gulf counties, Florida. Threats to the St. Andrew beach mouse include habitat loss/alteration from land development and associated human use, hurricanes and other tropical storm events, non-native predators, and recreational activity associated with development and tourism, that weaken and encroach on the dune ecosystem. Availability of suitable habitat may be a limiting factor during periods of population expansion or following catastrophic weather events.

A primary goal of the endangered species program is to restore an endangered or threatened species to the point where it is again a secure, self-sustaining member of its ecosystem and protection under the Act is no longer necessary. Recovery plans are developed, for most listed species, to help guide this process. Within these plans we define measurable criteria that are used as benchmarks for downlisting or delisting the species. To achieve these benchmarks, the recovery plans describe actions considered necessary for conservation of the species and the time and costs estimates associated with implementing these recovery measures. The status of the species will be reviewed and it will be considered for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17) when the recovery criteria are met.

The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires us to provide a public notice and an opportunity for public review and comment during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

Request for Public Comments

We will consider all comments received by the date specified above prior to final approval of the recovery plan.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 25, 2009.

Ed Buskirk,

Acting Regional Director, Southeast Region.

[FR Doc. E9–9178 Filed 4–21–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Supplemental information on water quality considerations.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 22, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Kirchoff, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Supplemental Information on Water Quality Considerations.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5000.30. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. The data supplied by the applicant is used by ATF to determine if any environmental impact statement or environmental permit is necessary for the proposed operation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 680 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: There are an estimated 340 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 17, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–9274 Filed 4–21–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Environmental Information.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until June 22, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Kirchoff, Federal Explosives Licensing Center, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* New.

(2) *Title of the Form/Collection:* Environmental Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5000.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. The data supplied by the applicant is used by ATF to determine if any environmental impact statement or environmental permit is necessary for the proposed operation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 680 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 340 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 17, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–9275 Filed 4–21–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0039]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a currently approved collection. Bioterrorism Preparedness Act: Entity/Individual Information.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until June 22, 2009. This process is conducted in accordance with 5 CFR 1320.10.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to John E. Strovers, CJIS Division Intelligence Group, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS), Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306; facsimile (304) 625–5393.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of

other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of information collection:* Extension of current collection.

(2) *The title of the form/collection:* Federal Bureau of Investigation Bioterrorism Preparedness Act: Entity/Individual Information.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Forms FD–961; Criminal Justice Information Services Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: City, county, State, Federal, individuals, business or other for profit, and not-for-profit institute. This collection is needed to receive names and other identifying information submitted by individuals requesting access to specific agents or toxins, and consult with appropriate officials of the Department of Health and Human Services and the Department of Agriculture as to whether certain individuals specified in the provisions should be denied access to or granted limited access to specific agents.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 4,784 (FY 2008) respondents at 45 minutes for FD–961 Form.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 3,588 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 17, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–9271 Filed 4–21–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of petitions for modification of existing mandatory safety standards.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification filed by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations, and Variances on or before May 22, 2009.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: Standards-Petitions@dol.gov*.

2. *Facsimile:* 1–202–693–9441.

3. *Regular Mail:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209, Attention: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Docket Number: M–2009–001–C.

Mines: Clementine Mine, MSHA I.D. No. 36–08862, Darmac No. 2 Mine, MSHA I.D. No. 36–08135, Dutch Run Mine, MSHA I.D. No. 36–08701, Logansport Mine, MSHA I.D. No. 36–08841, Tracy Lynne Mine, MSHA I.D. No. 36–08603, located in Armstrong County, Pennsylvania; Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania; Brush Valley Mine, MSHA I.D. No. 36–09437, Lowry Mine, MSHA I.D. No. 36–09287, Tom's Run Mine, MSHA I.D. No. 36–08525, Heilwood Mine, MSHA I.D. No. 36–09407, located in Indiana County, Pennsylvania; Little Toby Mine, MSHA I.D. No. 36–08847, located in Elk County, Pennsylvania; Mine 78, MSHA I.D. No. 36–09371, located in Somerset County, Pennsylvania; Penfield Mine, MSHA I.D. No. 36–09355, located in Clearfield County, Pennsylvania; and Twin Rocks Mine, MSHA I.D. No. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered non-permissible surveying equipment, including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and laptop computers in or inby the last open crosscut. The petitioner proposes to: (1) Use non-permissible electronic surveying equipment in or inby the last open crosscut and examine the equipment prior to use to ensure that the equipment is in safe operating condition; (2) have a qualified person examine the equipment at intervals not to exceed 7 days and record the examination results in the weekly electrical equipment examination book. The examination will include: (i) Checking the instrument for any

physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections: and (v) checking the battery compartment cover to ensure that it is securely fastened. In addition, the operator will also: (1) Have a qualified person continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (2) eliminate the use of non-permissible surveying equipment if methane is detected in concentrations at or above 1.0 percent; (3) de-energize the equipment immediately and withdraw the equipment further than 150 feet from pillar workings when 1.0 percent or more of methane is detected while the equipment is in use; (4) eliminate the use of non-permissible surveying equipment where float coal dust is in suspension; (5) charge or change batteries contained in the surveying equipment in fresh air out of the return; (6) provide training to qualified personnel who use the surveying equipment to properly recognize the hazards and limitations associated with the use of the equipment; (7) put the non-permissible surveying equipment in service only after MSHA has initially inspected the equipment and determined that it is in compliance with all of the terms and conditions of this petition; and (8) submit proposed revisions for the part 48 training plan to the District Manager, which will include specified initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and the proposed alternative method would at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket Number: M–2009–002–C.

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mines: Clementine Mine, MSHA I.D. No. 36–08862, Darmac No. 2 Mine, MSHA I.D. No. 36–08135, Dutch Run Mine, MSHA I.D. No. 36–08701, Logansport Mine, MSHA I.D. No. 36–08841, Tracy Lynne Mine, MSHA I.D. No. 36–08603, located in Armstrong County, Pennsylvania; Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania; Brush Valley Mine, MSHA I.D. No. 36–09437, Lowry Mine, MSHA I.D. No. 36–09287, Tom's Run Mine, MSHA I.D. No. 36–08525, Heilwood Mine, MSHA I.D. No. 36–09407, located in Indiana County, Pennsylvania; Little Toby Mine, MSHA I.D. No. 36–08847, located in Elk County, Pennsylvania; Mine 78, MSHA I.D. No. 36–09371, located in Somerset County, Pennsylvania; Penfield Mine, MSHA I.D. No. 36–09355, located in Clearfield County, Pennsylvania; and Twin Rocks Mine, MSHA I.D. No. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered non-permissible surveying equipment in return airways. The petitioner proposes to: (1) Use non-permissible electronic surveying equipment in or inby the last open crosscut and examine the equipment prior to use to ensure that the equipment is in safe operating condition; (2) have a qualified person examine the equipment at intervals not to exceed 7 days and record the examination results in the weekly electrical equipment examination book. The examination will include: (i) Checking the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections: and (v) checking the battery compartment cover to ensure that it is securely fastened. In addition, the operator will also: (1) Have a qualified person continuously monitor for methane immediately before and during the use of non-permissible surveying equipment in or inby the last open crosscut or in the return; (2) eliminate the use of non-permissible surveying equipment if methane is detected in concentrations at or above 1.0 percent; (3) de-energize the equipment immediately and withdraw the equipment further than 150 feet from pillar workings when 1.0 percent or more of methane is detected while the equipment is in use; (4) eliminate the use of non-permissible surveying equipment where float coal dust is in suspension; (5) charge or change batteries contained in the surveying equipment in fresh air out of the return; (6) provide training to qualified personnel who use the surveying equipment to properly recognize the hazards and limitations associated with the use of the equipment; (7) put the non-permissible surveying equipment in service only after MSHA has initially inspected the equipment and determined that it is in compliance with all of the terms and conditions of this petition; and (8) submit proposed revisions for the part 48 training plan to the District Manager, which will include specified initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and the proposed alternative method would at all times guarantee no less than the same measure of protection afforded by the existing standard.

Docket No: M–2009–003.

Petitioner: Rosebud Mining Company, P.O. Box 1025, Northern Cambria, Pennsylvania 15714.

Mines: Clementine Mine, MSHA I.D. No. 36–08862, Darmac No. 2 Mine, MSHA I.D. No. 36–08135, Dutch Run Mine, MSHA I.D. No. 36–08701, Logansport Mine, MSHA I.D. No. 36–08841, Tracy Lynne Mine, MSHA I.D. No. 36–08603, located in Armstrong County, Pennsylvania; Beaver Valley Mine, MSHA I.D. No. 36–08725, located in Beaver County, Pennsylvania; Brush Valley Mine, MSHA I.D. No. 36–09437, Lowry Mine, MSHA I.D. No. 36–09287, Tom's Run Mine, MSHA I.D. No. 36–08525, Heilwood Mine, MSHA I.D. No. 36–09407, located in Indiana County, Pennsylvania; Little Toby Mine, MSHA I.D. No. 36–08847, located in Elk County, Pennsylvania; Mine 78, MSHA I.D. No. 36–09371, located in Somerset County, Pennsylvania; Penfield Mine, MSHA I.D. No. 36–09355, located in Clearfield County, Pennsylvania; and Twin Rocks Mine, MSHA I.D. No. 36–08836, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002(a) (installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered non-permissible surveying equipment, including, but not limited to, portable battery operated mine transits, total station surveying equipment, distance meters, and laptop computers within 150 feet of pillar workings. The petitioner proposes to: (1) Use non-permissible electronic

surveying equipment in or inby the last open crosscut and examine the equipment prior to use to ensure that the equipment is in safe operating condition; (2) have a qualified person examine the equipment at intervals not to exceed 7 days and record the examination results in the weekly electrical equipment examination book. The examination will include: (i) Checking the instrument for any physical damage and the integrity of the case; (ii) removing the battery and inspecting for corrosion; (iii) inspecting the contact points to ensure a secure connection to the battery; (iv) reinserting the battery and powering up and shutting down to ensure proper connections: and (v) checking the battery compartment cover to ensure that it is securely fastened. In addition, the operator will also: (1) Have a qualified person continuously monitor for methane immediately before and during the use of non-permissible surveying equipment within 150 feet of pillar workings; (2) eliminate the use of non-permissible surveying equipment if methane is detected in concentrations at or above 1.0 percent; (3) de-energize the equipment immediately and withdraw the equipment further than 150 feet from pillar workings when 1.0 percent or more of methane is detected while the equipment is in use; (4) eliminate the use of non-permissible surveying equipment where float coal dust is in suspension; (5) charge or change batteries contained in the surveying equipment in fresh air outby the last open crosscut; (6) provide training to qualified personnel who use the surveying equipment to properly recognize the hazards and limitations associated with the use of the equipment; (7) put the non-permissible surveying equipment in service only after MSHA has initially inspected the equipment and determined that it is in compliance with all of the terms and conditions of this petition; and (8) submit proposed revisions for the part 48 training plan to the District Manager, which will include specified initial and refresher training regarding the terms and conditions stated in the Proposed Decision and Order. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and the proposed alternative method would at all times guarantee no less than the same measure of protection afforded by the existing standard.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E9–9168 Filed 4–21–09; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[NRC-2009-0164]

Notice of Availability of Draft NUREG-1536, Revision 1A, ''Standard Review Plan for Spent Fuel Dry Storage Systems at a General License Facility'', and Opportunity to Provide Comments

Correction

FR Notice Document E9-8602 was published on page 17696 in the issue of Thursday, April 16, 2009. This document was an inadvertent republication of FR Doc. E9-8599, which published on page 15746 in the issue of Wednesday, April 15, 2009. Therefore, FR Doc. E9-8602 is withdrawn.

[FR Doc. Z9–8599 Filed 4–21–08; 8:45 am]

BILLING CODE 1505–01–D

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. *Title and purpose of information collection:* Application for Survivor Insurance Annuities; OMB 3220–0030.

Under Section 2(d) of the Railroad Retirement Act (RRA), monthly survivor annuities are payable to surviving widow(er)s, parents, unmarried children, and in certain cases, divorced wives (husbands), mothers (fathers), remarried widow(er)s, and grandchildren of deceased railroad employees. The collection obtains the information required by the RRB to determine entitlement to and the amount of the annuity applied for.

The RRB currently utilizes Form(s) AA–17, Application for Widow(ers) Annuity, AA–17b Applications for Determination of Widow(er) Disability, AA–17cert, Application Summary and Certification, AA–18, Application for Mother's/Father's and Child's Annuity, AA–19, Application for Child's Annuity, AA–19a, Application for Determination of Child Disability, and AA–20, Application for Parent's Annuity to obtain the necessary information. The RRB proposes no changes to the forms in the information collection. One response is requested of each respondent. Completion is required to obtain benefits.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
AA–17 (manual, without assistance)	100	47	78
AA–17b (with assistance)	280	40	187
AA–17b (without assistance)	20	50	17
AA–17cert	3,000	20	1,000
AA–18 (manual, without assistance)	12	47	9
AA–19 (manual, without assistance)	9	47	7
AA–19a (with assistance)	285	45	214
AA–19a (without assistance)	15	65	16
AA–20 (manual, without assistance)	1	47	1

2. *Title and purpose of information collection:* Employer's Deemed Service Month Questionnaire; OMB 3220–0156.

Section 3 (i) of the Railroad Retirement Act (RRA), as amended by Public Law 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR Part 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employers Deemed Service Months Questionnaire, to obtain service and compensation information from railroad employers needed to determine if an employee can be credited with additional deemed months of railroad service.

The RRB proposes non-burden impacting, editorial and formatting changes to Form GL–99. Completion is mandatory. One response is required for each RRB inquiry. The completion time for Form GL–99 is estimated at 2 minutes per response. The RRB estimates that approximately 4,000 responses are received annually.

3. *Title and purpose of information collection:* Statement of Claimant or Other Person; OMB 3220–0083.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant. Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicants request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, Statement of Claimant or Other Person, to obtain the supplemental or corrective information from applicants or other persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits. The RRB proposes no changes to Form G–93. Completion is voluntary. One response is requested of each respondent. The completion time for Form G–93 is estimated at 15 minutes per response. The RRB estimates that approximately 900 responses are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–9180 Filed 4–21–09; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 15g–3, OMB Control No. 3235–0392, SEC File No. 270–346.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for approval of extension of the existing collection of information provided for in the following rule: Rule 15g–3—Broker or dealer disclosure of quotations and other information relating to the penny stock market (17 CFR 240.15g–3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–3 requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 240 broker-dealers will each spend an average of 100 hours annually to comply with the rule. Thus, the total compliance burden is estimated to be approximately 24,000 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: April 15, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9160 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–5; OMB Control No. 3235–0394; SEC File No. 270–348.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the existing collection of information provided for in the following rule: Rule 15g–5—Disclosure of compensation of associated persons in connection with penny stock transactions (17 CFR 240.15g–5) under the Securities

Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–5 requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 240 broker-dealers will spend an average of 100 hours annually to comply with the rule. Thus, the total compliance burden is approximately 24,000 burden-hours per year.

Rule 15g–5 contains record retention requirements. Compliance with the rule is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

April 15, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9162 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Requested

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–6; OMB Control No. 3235–0395; SEC File No. 270–349.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the existing collection of information provided for in the following rule: Rule 15g–6—Account statements for penny stock customers (17 CFR 240.15g–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–6 requires brokers and dealers that sell penny stocks to provide their customers monthly account statements containing information with regard to the penny stocks held in customer accounts. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 240 broker-dealers will spend an average of 90 hours annually to comply with this rule. Thus, the total compliance burden is approximately 21,600 burden-hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: April 15, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9163 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15g–4; OMB Control No. 3235–0393; SEC File No. 270–347.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the existing collection of information provided for in the following rule: Rule 15g–4—Disclosure of compensation to brokers or dealers (17 CRF 240.15g–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 15g–4 requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. The purpose of the rule is to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions.

The Commission estimates that approximately 240 broker-dealers will spend an average of 100 hours annually to comply with the rule. Thus, the total compliance burden is approximately 24,000 burden-hours per year.

Rule 15g–4 contains record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker or dealer is a member. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to *PRA_Mailbox@sec.gov.* Comments must be submitted within 30 days of this notice.

Dated: April 15, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9161 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59771; File No. SR–FINRA–2009–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, Relating to the Adoption of FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information From the Central Registration Depository (CRD System)), FINRA Rule 2310 (Direct Participation Programs), FINRA Rule 4551 (Requirements for Alternative Trading Systems To Record and Transmit Order and Execution Information for Security Futures) and FINRA Rule 2266 (SIPC Information) in the Consolidated FINRA Rulebook

April 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. On April 14, 2009, FINRA filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (1) adopt NASD Rules 2130 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD System)), 2810 (Direct Participation Programs) and 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook without material change; and (2) adopt NASD Rule 2342 (SIPC Information) in the consolidated FINRA rulebook without material change and to delete Incorporated NYSE Rule 409A (SIPC Disclosures). The proposed rule change would renumber NASD Rule 2130 as FINRA Rule 2080, NASD Rule 2810 as FINRA Rule 2310, NASD Rule 3115 as FINRA Rule 4551 and NASD Rule 2342 as FINRA Rule 2266 in the consolidated FINRA rulebook.

Amendment No. 1 to SR–FINRA–2009–016 makes minor changes to the original filing filed on March 25, 2009. The proposed rule change replaces and supercedes the proposed rule change filed on March 25, 2009 in its entirety.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook''),[4] FINRA is proposing to (1) adopt FINRA Rules 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System), 2310 (Direct Participation Programs) and 4551 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) as FINRA rules in the consolidated FINRA rulebook; and (2) adopt FINRA Rule 2266 (SIPC Information) in the consolidated FINRA rulebook and delete the corresponding provisions in Incorporated NYSE Rule 409A.

a. Proposed FINRA Rule 2080

FINRA is proposing to adopt NASD Rule 2130 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2080. NASD Rule 2130 addresses the expungement of customer dispute information from the Central Registration Depository (''CRD®'') system. The CRD system is an online registration and licensing system that is used by the securities industry, State and Federal regulators and self-regulatory organizations. It contains information regarding members and registered persons, specifically administrative information (*e.g.,* personal, educational and employment history) and disclosure information (*e.g.,* criminal matters, regulatory and disciplinary actions, civil judicial actions and information relating to customer disputes). Although public investors do not have access to the CRD system, much of the information in that system is available to investors through FINRA BrokerCheck and individual State disclosure programs.[5] FINRA recognizes that accurate and complete reporting in the CRD system is an important component of investor protection.

FINRA operates the CRD system pursuant to policies developed jointly with the North American Securities Administrators Association (''NASAA''). FINRA works with the SEC, NASAA, other members of the regulatory community and member firms to establish policies and procedures reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. These procedures, among other things, cover expungement of information from the CRD system.

In January 1999, after consultation with NASAA, FINRA imposed a moratorium on arbitrator-ordered expungement of customer dispute information from the CRD system.[6] Under the moratorium, FINRA would expunge such information from the CRD system only when a court of competent jurisdiction confirmed an arbitrator's directive to expunge customer dispute information. During this moratorium, however, FINRA continued to expunge information from the CRD system based

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superceded the original filing.

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] FINRA BrokerCheck is a free online tool to help investors check the background of current and former FINRA-registered securities firms and brokers.

[6] *See Notice to Members* 99–09 (February 1999) and *Notice to Members* 99–54 (July 1999).

on expungement directives in arbitration awards rendered in disputes between firms and current or former registered persons, in which arbitrators awarded such relief based on the defamatory nature of the information.

After imposing the moratorium, FINRA began considering how to craft an approach to expungement that would allow FINRA effectively to challenge expungement directives that might diminish or impair the integrity of the CRD system and to ensure the maintenance of essential information for regulators and investors. In December 2003, the SEC approved NASD Rule 2130,[7] which contains additional standards and procedures for expungement of customer dispute information [8] from the CRD system. Rule 2130 continues the requirement started with the 1999 moratorium that a court of competent jurisdiction must order or confirm all expungement directives before FINRA will expunge customer dispute information from the CRD system.[9] It also requires that FINRA members or associated persons name FINRA as an additional party in any court proceeding in which they seek an order to expunge customer dispute information or request confirmation of an award containing an order of expungement.

Upon request, however, FINRA may waive the requirement to be named as a party if it determines that the expungement relief is based on an affirmative judicial or arbitral finding that: (1) The claim, allegation or information is factually impossible or clearly erroneous; (2) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (3) the claim, allegation or information is false. If the expungement relief is based on judicial or arbitral findings other than those enumerated immediately above, FINRA also may waive the requirement to be named as a party if FINRA determines, in its sole discretion and under extraordinary circumstances, that the expungement relief and accompanying findings on which it is based are meritorious and the expungement relief would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Upon receipt of a waiver request, FINRA staff will notify the States (directly or through NASAA) where the individual is registered or seeking registration of the expungement notice/waiver request. FINRA staff will then examine the basis on which the fact finder ordered expungement to determine whether the expungement was based on one or more of the standards in Rule 2130.[10] If FINRA staff determines that the expungement was not based on one or more of the standards in Rule 2130, it will advise the parties that FINRA will not waive the requirement to be named as a party in the court confirmation process. The parties would then name FINRA as a party, and FINRA would have the opportunity to oppose the expungement in the court proceeding.

FINRA recommends that NASD Rule 2130 be transferred without material change into the Consolidated FINRA Rulebook. NASD Rule 2130 was the product of notice and comment rulemaking. FINRA solicited comment on proposed approaches regarding expungement of information in *Notices to Members* issued in July 1999 and October 2001.[11] FINRA staff drafted the proposed rule taking into account the comments received and following discussions with NASAA. Subsequently, the SEC published the proposal for comment in the **Federal Register** in March 2003, and the final rule reflects additional changes based on the comments received by the SEC. NASD Rule 2130 serves to enhance the integrity of information in the CRD system and to further ensure that investor protection is not compromised when arbitrators order expungement of information from a CRD record. Moreover, the new procedures that arbitrators must follow when considering requests for expungement will add transparency and procedural safeguards designed to ensure that the extraordinary relief of expungement is granted only under appropriate circumstances.

b. Proposed FINRA Rule 2310

FINRA is proposing to adopt NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. NASD Rule 2810 addresses underwriting terms and arrangements in public offerings of direct participation programs (''DPPs'') and unlisted real estate investment trusts (''REITs'') (collectively, ''Investment Programs''). A DPP is a business venture designed to let investors participate directly in the cash flow and tax benefits of an underlying investment. REITs are investment vehicles for income-generating real estate that benefit from the tax advantages of a trust if they satisfy certain criteria in the Internal Revenue Code. Rule 2810 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

NASD Rule 2810 requires that, prior to participating in a public offering of an Investment Program, a member or a participating firm on its behalf must file information regarding the offering with the FINRA Corporate Financing Department and receive an opinion from the Department that it has no objections to the proposed underwriting terms and arrangements (a ''no objections'' opinion). Among the terms and arrangements that are reviewed by FINRA staff are the level of organization and offering expenses (''O&O expenses''). Rule 2810 limits the amount of O&O expenses for an Investment Program (which includes issuer expenses, underwriting compensation and due diligence expenses) to 15 percent of the gross proceeds of the offering. The rule also requires a member to perform due diligence about an Investment Program prior to participating in a public offering. The member must have reasonable grounds to believe, based on information in the prospectus, that all material facts, including those regarding compensation, physical properties, tax, financial stability and experience of the sponsor, and conflicts, are adequately

[7] *See* Securities Exchange Act Release No. 48933 (December 16, 2003), 68 FR 74667 (December 24, 2003). FINRA Rule 2080, as with NASD Rule 2130, would apply to any request made to a court of competent jurisdiction to expunge customer dispute information from the CRD system that has its basis in an arbitration or civil lawsuit filed on or after April 12, 2004. *See Notice to Members* 04–16 (March 2004).

[8] For purposes of Rule 2130, ''customer dispute information'' includes customer complaints, arbitration claims and court filings made by customers, and the arbitration awards or court judgments that may result from those claims or filings. *See Notice to Members* 04–16 (March 2004).

[9] Under Rule 2130, FINRA may continue to expunge information from the CRD system—without the need for judicial intervention—for expungement directives contained in intra-industry arbitration awards that involve registered persons and firms based on the defamatory nature of the information ordered expunged.

[10] In October 2008, the SEC approved a FINRA rule change (File No. SR–FINRA–2008–10), which became effective January 26, 2009, establishing new procedures that arbitrators must follow when considering requests for expungement relief, including requiring arbitrators to: (1) Consider the terms of a settlement agreement in settled matters; (2) hold a recorded hearing regarding the appropriateness of expungement; and (3) provide a brief written explanation of the reason(s) for ordering expungement. *See* Securities Exchange Act Release No. 58886 (October 30, 2008), 73 FR 66086 (November 6, 2008). *See also Regulatory Notice* 08–79 (December 2008).

[11] *See Notice to Members* 99–54 (July 1999) and *Notice to Members* 01–65 (October 2001).

and accurately disclosed and provide a basis for evaluating the Investment Program.

In addition, NASD Rule 2810 contains an exception from the disclosure requirements for offerings of certain Investment Programs that are listed, or approved for listing, on a national securities exchange. This exception, currently in paragraph (b)(1), would be relocated to paragraph (b)(3)(D) of the new rule, the section of the rule addressing disclosures. In this regard, the proposed rule change would return the exception to its original location in the rule. Prior to 2008, the exception was located in paragraph (b)(3)(D) of the rule; however, as part of a larger effort to streamline the rule in SR–NASD–2005–114, it was moved to paragraph (b)(1).[12] The proposed rule change would enhance the clarity of the rule by re-locating the exception to the section addressing disclosures at paragraph (b)(3)(D).

The rule also imposes specific suitability standards on recommended transactions to take account of the risks and lack of liquidity of Investment Programs. Further, it requires members and associated persons to ensure, prior to participating in a public offering of an Investment Program, that all material facts are adequately and accurately disclosed, including pertinent facts relating to the liquidity and marketability of the Investment Program. In addition, under Rule 2810, members cannot accept or make non-cash gifts in connection with the sale or distribution of an Investment Program in excess of $100 per year, nor can any non-cash entertainment (such as an occasional meal) raise any question of propriety or be conditioned on the achievement of a sales target. Finally, the non-cash provisions of the rule prohibit payments for an associated person to attend training or educational meetings unless the associated person obtains the member's prior approval and such training and entertainment is not based upon the associated person achieving a sales target. Collectively, these non-cash provisions are aimed at preventing Investment Program sponsors from using non-cash compensation as a means to circumvent the limits on underwriting compensation.

NASD Rule 2810 was adopted in 1980 to address issues arising from members' participation in oil and gas programs and real estate syndications in the 1970s.[13] It has been amended periodically to include additional programs and procedures,[14] including greater limitations on sales incentive compensation and members' participation in limited partnership rollup transactions.[15] These amendments were adopted to address new developments regarding members' participation in Investment Programs, and were the product of extensive notice and comment rulemaking over a period of several years.[16] The most recent amendments to the rule, which became effective on August 6, 2008, address O&O expenses and enhanced investor disclosures regarding the liquidity of Investment Programs.[17]

FINRA believes that the rule as currently drafted is well-understood by the sponsors of Investment Programs and the broker-dealers that sell them, and is providing significant investor protections. As a result, FINRA recommends that NASD Rule 2810 be transferred without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310.

c. Proposed FINRA Rule 4551

FINRA is proposing to adopt NASD Rule 3115 without material change into the Consolidated FINRA Rulebook as FINRA Rule 4551. NASD Rule 3115 (Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures) requires alternative trading systems (''ATSs'')[18] that accept orders for security futures[19] to record and report to FINRA certain information regarding those orders, including the date and time the order was received, the security future product name and symbol, the details of the order, and the date and time that the order was executed. The rule thus provides FINRA with an audit trail of orders for security futures placed on an ATS.

NASD Rule 3115 was adopted in 2003 following the amendments to the Act included in the Commodity Futures Modernization Act of 2000.[20] Section 6(h)(5) of the Act, which was added as part of those amendments, prohibits a person other than a national securities association or national securities exchange from maintaining or providing a marketplace or facilities for bringing together purchasers and sellers of security futures products unless it is a member of a national securities association or national securities exchange that has: (1) Procedures for coordinated surveillance; (2) rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance; and (3) rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.[21] FINRA adopted NASD Rule 3115 as part of a package of rules to meet these requirements and thus allow ATSs that are FINRA members to provide a marketplace for security futures. Specifically, NASD Rule 3115 satisfies the requirement that a national securities association have ''rules to require an audit trail necessary or appropriate to facilitate coordinated surveillance.''[22]

Because NASD Rule 3115 is necessary to allow ATSs to provide trading facilities for security futures, the proposed rule change would transfer NASD Rule 3115 into the Consolidated FINRA Rulebook as FINRA Rule 4551

[12] *See* Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

[13] *See* Securities Exchange Act Release No. 16967 (July 8, 1980), 45 FR 47294 (July 14, 1980).

[14] For example, some significant amendments to Rule 2810 include the following: in 1982, amendments to include suitability, due diligence and disclosure requirements; *see* Securities Exchange Act Release No. 19054 (September 16, 1982), 47 FR 42226 (September 24, 1982); in 1984, to require that sales incentives be in cash; *see* Securities Exchange Act Release No. 20844 (April 11, 1984), 49 FR 15041 (April 16, 1984); in 1986, to exempt certain secondary offerings; *see* Securities Exchange Act Release No. 23619 (September 15, 1986), 51 FR 33968 (September 24, 1986); in 1994, to apply to limited partnership rollup transactions; *see* Securities Exchange Act Release No. 34533 (August 15, 1994), 59 FR 43147 (August 22, 1994); and in 2003, to modify the non-cash compensation provisions; *see* Securities Exchange Act Release No. 47697 (April 18, 2003), 68 FR 20191 (April 24, 2003).

[15] A limited partnership rollup transaction either reorganizes an existing limited partnership or combines multiple limited partnerships into a new entity to take advantage of larger asset pools and economies of scale.

[16] *See supra* note 14.

[17] *See* Securities Exchange Act Release No. 57803 (May 8, 2008), 73 FR 27869 (May 14, 2008).

[18] ATSs generally are registered broker-dealers that provide or maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange but do not perform self-regulatory functions.

[19] A security future is a contract of sale for future delivery of a single security or of a narrow-based security index. Security futures are defined as ''securities'' under the Act; consequently, the federal securities laws are generally applicable to security futures. *See* 15 U.S.C. 78c(a)(10).

[20] *See* Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003).

[21] 15 U.S.C. 78f(h)(5).

[22] In the same rule filing adopting NASD Rule 3115, FINRA also amended NASD Rule 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) to satisfy the requirement that a national securities association have ''rules to require such person to coordinate trading halts with markets trading the securities underlying the security futures products and other markets trading related securities.'' *See* Securities Exchange Act Release No. 47259 (January 27, 2003), 68 FR 5319 (February 3, 2003). The proposed rule change does not address NASD Rule 3340.

without material change. This would allow ATSs to continue to provide trading facilities for security futures and would ensure FINRA receives information to maintain an audit trail regarding the trading of security futures.

d. Proposed FINRA Rule 2266

FINRA is proposing to adopt NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and to delete comparable Incorporated NYSE Rule 409A. NASD Rule 2342 and Incorporated NYSE Rule 409A were adopted in response to a May 2001 report issued by the Government Accountability Office (''GAO''), entitled ''Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors.'' [23] In that report, the GAO made recommendations to the SEC and the Securities Investor Protection Corporation (''SIPC'') about ways to improve the information available to the public about SIPC and the Securities Investor Protection Act of 1970 (''SIPA''). Among other things, the GAO recommended that self-regulatory organizations explore ways to encourage broader dissemination of the SIPC brochure to customers so that they can become more aware of the scope of coverage of SIPA.

In May 2007, the SEC approved NASD Rule 2342 setting forth requirements for providing SIPC information to customers. Rule 2342 requires all FINRA members, except those members (1) that are excluded from membership in SIPC and are not SIPC members; or (2) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to advise all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Such members also must provide SIPC's Web site address and telephone number. Members must provide this disclosure to new customers, in writing, at the opening of an account and also must provide customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

Incorporated NYSE Rule 409A is substantially similar to NASD Rule 2342; however, the Incorporated NYSE rule does not contain the exclusions set forth in NASD Rule 2342 because NYSE member organizations generally would not qualify for those exclusions.

FINRA believes that the approach in NASD Rule 2342, which excludes non-SIPC members and members that sell exclusively non-SIPC eligible securities from the rule's requirements, is the more appropriate rule for the FINRA membership. Accordingly, the proposed rule change would transfer NASD Rule 2342 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2266 and delete Incorporated NYSE Rule 409A.

As noted above, FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[24] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that transferring NASD Rule 2130 into the Consolidated FINRA Rulebook will ensure that its standards and procedures regarding expungement of customer dispute information from the CRD system continue to be reasonably designed to ensure that information submitted to and maintained in the CRD system is accurate and complete. FINRA believes that transferring NASD Rule 2810 into the Consolidated FINRA Rulebook will ensure that policies and procedures regarding members' participation in public offerings of Investment Programs continue to meet statutory mandates. FINRA believes that transferring NASD Rule 3115 into the Consolidated FINRA Rulebook will continue to allow ATSs to provide trading facilities for security futures while also ensuring that FINRA will receive sufficient information to maintain an audit trail regarding the trading of security futures on ATSs. Finally, FINRA believes that transferring NASD Rule 2342 into the Consolidated FINRA Rulebook will continue to ensure that SIPC information is provided to customers effectively. The proposed rule change makes non-material changes to rules that have proven effective in meeting the statutory mandates.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–016. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[23] *See* U.S. Government Accountability Office, ''Securities Investor Protection: Steps Needed to Better Disclose SIPC Policies to Investors,'' Publication GAO–01–653 (May 25, 2001).

[24] 15 U.S.C. 78*o*–3(b)(6).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–016 and should be submitted on or before May 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9157 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59774; File No. SR–DTC–2009–08]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Settlement Service Guide and Settlement Progress Payments

April 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 3, 2009, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will (i) amend DTC's Settlement Service Guide's instructions regarding withdrawals of intraday principal and income payments for non-money market instrument issues and (ii) update certain aspects of DTC's Settlement Progress Payments (''SPP'') procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC is amending the procedures governing a participant's withdraw of principal and income (''P&I'') payments for non-money market instrument issues that DTC has received from paying agents and allocated to a participant's settlement account. The changes include the address and fax number to which a participant must send the wire instruction form to and the information that must be included in that form as well as a clarification that the funds must be wired to the participant's DTC settlement bank.[4]

DTC is also amending its SPP procedures. As background, an SPP is a payment sent from a DTC participant to DTC through Fedwire when a DTC participant has insufficient collateral[5] or is at its net debit cap.[6] The SPP creates a credit to the participant's settlement account thereby reducing their net debit and allowing the participant to continue to receive deliveries into their participant account.

Under this rule change, DTC will implement a new automated SPP return functionality that will permit participants to request that DTC return all or a portion of an SPP and to have these payments wired to the participant's settlement bank account[7] intraday and before the settlement period. DTC states that these changes should simplify the SPP return process and should allow participants to maximize the early return of available liquidity.[8]

Prior to this rule change, DTC would return only the full amount of a SPP provided that returning the SPP would not result in a negative collateral monitor[9] or cause the participant's net settlement debit to exceed its net debit cap.[10] DTC would debit the full amount of the SPP from the participant's settlement account and return the funds through Fedwire to the participant's original sending bank. If a participant only had sufficient collateral or debit cap to return a portion of the SPP, DTC would not process the request until the full amount of the SPP could be returned. Furthermore, return requests required manual approval from DTC's Settlement Operations.

The changes to DTC's SPP function also include new wire instructions and parameters for using the new automated SPP Return function.[11]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder applicable to DTC. The proposed rule change will not affect the

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The rule change does not change the option for a participant to submit P&I withdrawal requests electronically.

[5] ''Collateral'' is defined in DTC's rules as the sum of (i) the participant's Actual Fund Deposit, (ii) the participant's Actual Preferred Stock Investment, (iii) the participant's Net Additions, and (iv) any SPPs wired by the participant to DTC's account at the Federal Reserve Bank of New York.

[6] A net debit cap helps ensure that DTC can complete settlement, even if a participant fails to settle.

[7] Under DTC's rules, a settling bank is a participant that is a bank or trust company subject to supervision or regulation pursuant to Federal or State banking laws and a party to an effective ''Settling Bank Agreement.''

[8] The upcoming reduction in debit caps for ''families'' will likely cause increased volume in SPPs. *See* Securities Exchange Act Release No. 59148 (Dec. 23, 2008), 73 FR 80481 (Dec. 31, 2008).

[9] DTC tracks collateral in a participant's account through the Collateral Monitor (''CM''). The CM reflects the amount that the collateral in the account exceeds the net debit in the account. When processing a transaction, DTC verifies that the participant's CM would not become negative when the transaction completes. If the transaction would cause the participant to have a negative CM, the transaction will recycle until the participant has sufficient collateral to complete.

[10] Withdrawals that are blocked as a result of insufficient collateral or net debit cap will recycle until enough collateral or settlement credits are generated to satisfy the collateral or net debit cap deficiency or until the end of the recycle period when transactions that have not successfully completed are dropped by the system.

[11] The updated wire instructions are attached as Exhibit 5 to DTC's rule filing.

[12] 15 U.S.C. 78q–1.

safeguarding of funds or securities in DTC's custody and control or for which it is responsible because it allows for a more efficient processing of P&I withdrawals and SPP returns.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited or received written comments relating to the proposed rule change. DTC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(4) [14] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comment@sec.gov.* Please include File No. SR–DTC–2009–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–DTC–2009–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. to 3 p.m. Copies of such filing also will be available for inspection and copying at DTC's principal office and on DTC's Web site at *http://www.dtc.org/impNtc/mor/index.html.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–DTC–2009–08 and should be submitted on or before May 13, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9239 Filed 4–21–09; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59777; File No. SR–ISE–2009–20]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

April 16, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 3 Premium Products.[3] The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the ProShares Ultra Silver ETF (''AGQ''), the Direxion Emerging Markets Bull 3x Shares (''EDC'') and the Direxion Emerging Markets Bear 3x Shares (''EDZ'').[4] The Exchange represents that AGQ, EDC and EDZ are eligible for options trading because they constitute ''Exchange-Traded Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee for all transactions in options on AGQ, EDC and EDZ.[5] The amount of the execution fee for products covered by this filing shall be $0.18 per contract for all Public Customer Orders[6] and $0.20 per contract for all Firm Proprietary orders. The amount of the execution fee for all ISE Market Maker transactions shall be equal to the execution fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[7] Finally, the amount of the execution fee for all non-ISE Market Maker transactions shall be $0.45 per contract.[8] Further, since options on AGQ, EDC and EDZ are multiply-listed, the Exchange's Payment for Order Flow fee shall apply to all these products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, as a matter of housekeeping, the Exchange proposes to remove FTZ from the surcharge fee line item on its Schedule of fees.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2009–20 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–ISE–2009–20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does

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[5] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2009, these fees will also be charged to Linkage Principal Orders (''Linkage P Orders'') and Linkage Principal Acting as Agent Orders (''Linkage P/A Orders''). The amount of the execution fee charged by the Exchange for Linkage P Orders and Linkage P/A Orders is $0.27 per contract side and $0.18 per contract side, respectively. *See* Securities Exchange Act Release No. 58143 (July 11, 2008), 73 FR 41388 (July 18, 2008) (SR–ISE–2008–52).

[6] Public Customer Order is defined in Exchange Rule 100(a)(39) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(38) as a person or entity that is not a broker or dealer in securities.

[7] The Exchange applies a sliding scale, between $0.01 and $0.18 per contract side, based on the number of contracts an ISE market maker trades in a month.

[8] The amount of the execution fee for non-ISE Market Maker transactions executed in the Exchange's Facilitation and Solicitation Mechanisms is $0.20 per contract.

[9] FTZ was previously delisted and no longer trades on the Exchange. Pursuant to SR–ISE–2008–07, filed on January 14, 2008, the Exchange removed FTZ from its Customer (Premium Products) line item and from its Payment for Order Flow line item on its fee schedule. In that filing, the Exchange, however, inadvertently failed to remove FTZ from its surcharge fee line item on its fee schedule.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–ISE–2009–20 and should be submitted on or before May 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9203 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59773; File Nos. SR–BX–2009–019, SR–NASDAQ–2009–032, SR–Phlx–2009–31]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; the NASDAQ Stock Market LLC; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes To Amend the Certificate of Incorporation of the NASDAQ OMX Group, Inc.

April 15, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2009, NASDAQ OMX BX, Inc. (''BX''), the NASDAQ Stock Market LLC (''NASDAQ Exchange'') and NASDAQ OMX PHLX, Inc. (''Phlx'') (collectively, the ''NASDAQ OMX Exchange Subsidiaries'')[3] filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I, II, and III below, which Items have been substantially prepared by the NASDAQ OMX Exchange Subsidiaries. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The NASDAQ OMX Exchange Subsidiaries are filing the proposed rule changes with regard to proposed changes to the Restated Certificate of Incorporation (the ''Certificate'') of their parent corporation, NASDAQ OMX. The proposed rule changes will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule changes is available at *http://www.cchwallstreet.com/nasdaqomx/*, *http://www.nasdaqtrader.com/Trader.aspx?id=BSEIERules2009*, and *http://www.nasdaqtrader.com/Micro.aspx?id=PhlxApprovedRulefilings*, respectively, and at the respective NASDAQ OMX Exchange Subsidiary's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, each of the NASDAQ OMX Exchange Subsidiaries included statements concerning the purpose of and basis for its proposed rule change and discussed any comments it received on its proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Each of the NASDAQ OMX Exchange Subsidiaries has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must, under Section 19 of the Act and the rules promulgated thereunder, be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be. The governing boards of BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each reviewed the proposed change and determined that it should be filed with the Commission.[4] The changes to the Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX is proposing to restate, without amendment, its Certificate. The Certificate is composed of a previous Restated Certificate of Incorporation adopted in 2003, and numerous subsequent amendments, which, under Delaware law, are adopted as freestanding documents. However, Delaware law allows the various documents comprising a certificate of incorporation to be consolidated into a single restated certificate upon approval of a corporation's board of directors. The change will assist interested persons, including NASDAQ OMX stockholders and Commission staff, in reading the Certificate without having to review multiple documents. The restated Certificate reflects the deletion of both the Certificate of Designations, Preferences and Rights of Series D Preferred Stock and the Certificate of Elimination that was recently filed with respect to it.[5] Since the latter component of the Certificate cancels the former, they are both deleted from the restated Certificate.

2. Statutory Basis

The NASDAQ OMX Exchange Subsidiaries believe that their respective proposed rule changes are consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(1) and (b)(5) of the Act,[7] in particular, in that the proposal enables the NASDAQ OMX Exchange Subsidiaries to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply with and enforce compliance by members and persons associated with members with provisions of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that on April 2, 2009, substantially similar filings also were submitted by Boston Stock Exchange Clearing Corporation (''BSECC'') (SR–BSECC–2009–003) and Stock Clearing Corporation of Philadelphia (''SCCP'') (SR–SCCP–2009–02), the clearing corporation subsidiaries of NASDAQ OMX Group, Inc. (''NASDAQ OMX'').

[4] BX, the NASDAQ Exchange, Phlx, BSECC, and SCCP have each submitted its respective filing pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

[5] Securities Exchange Act Release No. 59460 (February 26, 2009), 74 FR 9841 (March 6, 2009) (SR–NASDAQ–2009–010, SR–BX–2009–009, SR–Phlx–2009–14); Securities Exchange Act Release No. 59496 (March 3, 2009), 74 FR 10626 (March 11, 2009) (SR–BSECC–2009–01); Securities Exchange Act Release No. 59494 (March 3, 2009), 74 FR 10642 (March 11, 2009) (SR–SCCP–2009–01).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(1), (b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed change will enhance the clarity of NASDAQ OMX's governance documents by restating the various documents comprising the Certificate as a single document.

B. Self-Regulatory Organizations' Statements on Burden on Competition

The NASDAQ OMX Exchange Subsidiaries do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes have become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(3) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the respective proposed rule change by the applicable NASDAQ OMX Exchange Subsidiary, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes, are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*, or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Nos. SR–BX–2009–019, SR–NASDAQ–2009–032, SR–Phlx–2009–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Nos. SR–BX–2009–019, SR–NASDAQ–2009–032, SR–Phlx–2009–31. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Nos. SR–BX–2009–019, SR–NASDAQ–2009–032, and SR–Phlx–2009–31, and should be submitted on or before May 13, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9202 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59772; File No. SR–FINRA–2008–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

April 15, 2009.

I. Introduction

On May 21, 2008, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain provisions of NASD Rule 2821.[3] The proposed rule change would modify the rule's scope and the timing of principal review in addition to clarifying, through a ''Supplementary Material'' section following the rule text, various issues raised by commenters.[4] The proposed rule change was published for comment in the **Federal Register** on June 10, 2008.[5] The Commission received letters from 14 commenters in response to the proposed rule change.[6] On November 12, 2008, FINRA responded to the comments[7] and submitted Amendment No. 1 to the proposed rule change. On April 1, 2009, FINRA submitted Amendment No. 2 to the proposed rule change. This order provides notice of the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 17, 2008, FINRA filed a separate proposed rule change, which became effective upon filing, to delay the effective date of paragraphs (c) and (d) of NASD Rule 2821 until 180 days following the Commission's approval or rejection of the substantive proposed rule changes found in this filing. *See* Securities Exchange Act Release No. 57769 (May 2, 2008), 73 FR 26176 (May 8, 2008) (delaying order). Paragraphs (a), (b), and (e) of NASD Rule 2821 became effective as originally scheduled on May 5, 2008.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 57920 (June 4, 2008); 73 FR 32771 (June 10, 2008) (''notice'' or ''proposal'').

[6] *See infra* note 9.

[7] *See* Letter from James Wrona, Associate Vice President and Associate General Counsel, FINRA, to Florence Harmon, Acting Secretary, Commission, dated November 12, 2008 (''FINRA's Response'').

change, as modified by Amendment Nos. 1 and 2, and approves the proposed rule change, as amended, on an accelerated basis.

II. Description of the Proposed Rule Change

FINRA proposed to amend NASD Rule 2821 to modify the rule's scope and the timing of principal review. In addition, FINRA proposed to clarify various issues that commenters have raised through a ''Supplementary Material'' section following the rule text. These proposed changes are discussed in further detail below.

A. Limit Application of the Rule to Recommended Transactions

Paragraph (c) of NASD Rule 2821 requires principals to treat all transactions as if they have been recommended for purposes of the rule. Following the Commission's approval of the rule, however, several commenters asked that the Commission and FINRA reconsider this approach. As FINRA stated in the notice, some commenters asserted that applying the rule to non-recommended transactions would have unintended and harmful consequences. In particular, these commenters claimed that applying the rule to non-recommended transactions would effectively force out of the deferred variable annuities business some firms that offer low priced products, but that do not make recommendations or pay transaction-based compensation. In addition, commenters stated that, absent a recommendation, a customer should be free to invest in a deferred variable annuity without interference or second guessing from a broker-dealer.

In response, FINRA proposed to limit the rule's application to recommended transactions. In the notice, FINRA explained that limiting the rule to recommended transactions would be consistent with the approach taken in its general suitability rule, Rule 2310. FINRA also stated that this change would not detract from the effectiveness of Rule 2821 because at firms that permit registered representatives to make recommendations concerning deferred variable annuities, the vast majority of purchases and exchanges of deferred variable annuities are recommended. FINRA offered further support for the rule change by stating that non-recommended transactions pose fewer concerns regarding conflicts of interest and less of a need for heightened sales-practice requirements. FINRA also indicated that this change would promote competition by allowing a wide variety of business models to exist, including those premised on keeping costs low by, in part, eliminating the need for a sales force and large numbers of principals. Finally, FINRA stated that attempts by registered representatives to mischaracterize transactions as non-recommended would be mitigated by the requirement that firms implement reasonable measures to detect and correct circumstances when brokers mischaracterize recommended transactions as non-recommended.

B. Modifying the Starting Point for the Seven-Business-Day Review Period

NASD Rule 2821(c) requires principal review and approval ''[p]rior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.'' A number of commenters have asserted that this seven-day period may not allow for a thorough principal review. As mentioned in the notice, these commenters provided examples of situations where principal review might be delayed, such as when a customer inadvertently omits information from the application or when information provided by a customer on the application needs clarification.

FINRA proposed modifying the starting point for the seven-day review period. Under the proposal, the period would begin on the date when the firm's office of supervisory jurisdiction (''OSJ'') receives a complete and correct copy of the application. FINRA stated that this approach would allow firms to resolve issues that result in foreseeable delays and to conduct a thorough review, while maintaining a definite period within which the principal must make a final decision.

To help ensure that the process remains efficient, the proposal would also require the associated person who recommended the annuity to promptly transmit the complete and correct application package to the OSJ. However, that provision, proposed paragraph (b)(3), would not preclude a customer who chooses to forward documents directly from transmitting the complete and correct application package to the OSJ.

C. Clarification of Issues Through Supplementary Material

As indicated in the notice, previous commenters to the rule have raised a number of questions that FINRA believes require clarification. Accordingly, FINRA proposed adding a ''Supplementary Material'' section following the rule. FINRA also reconsidered the question of whether a member may forward funds to an insurance company for deposit in the insurance company's ''suspense account'' pending completion of principal review. In the notice, FINRA proposed modifying its earlier position rejecting such a process. Instead, FINRA proposed to allow the use of a ''suspense account'' under limited circumstances, including, among other things, a requirement that the insurance company segregate the funds in a manner equivalent to that required of a member under Exchange Act Rule 15c3–3.[8]

The proposed Supplementary Material section also offered clarification in a number of areas, including the application of lump-sum payments where part of the payment is intended for a deferred variable annuity, forwarding customer checks, what constitutes a ''reasonable effort'' to determine whether a customer has had a recent exchange at another broker-dealer, and the permissibility of using information required for principal review in the contract issuance process. FINRA indicated that each of these issues could broadly impact how broker-dealers sell, or process transactions in, deferred variable annuities.

III. Comment Letters

The Commission received letters from 14 commenters on the proposed rule change.[9] FINRA responded to the

[8] 17 CFR 240.15c3–3.

[9] The Committee of Annuity Insurers (''CAI'') submitted two separate letters that we consider to be one comment. *See* letter from Clifford Kirsch, Sutherland Asbill & Brennan LLP, on behalf of the CAI, dated July 1, 2008 (''CAI Letter'') and from Clifford Kirsch, Sutherland Asbill & Brennan LLP, on behalf of CAI, dated December 19, 2008 (''CAI Letter II'').

See letters from Deborah Peters, Director, Broker Dealer Compliance, EquiTrust Marketing Services, LLC to James Wrona [Associate Vice President and Associate General Counsel, FINRA], dated June 11, 2008 (''EquiTrust Letter''); Darrell Braman, Vice President and Associate Legal Counsel and Sarah McCafferty, Vice President and Chief Compliance Officer, T. Rowe Price Investment Services, Inc., dated June 23, 2008 (''T. Rowe Price Letter''); Theodore Tsung, Financial Services Software Innovator—Founder of digiTRADE and EAssist, dated June 30, 2008; Laurence S. Schultz, President, Public Investors Arbitration Bar Association, dated June 26, 2008 (''PIABA Letter''); Teresa Luiz, GWFS Equities, Inc., dated June 30, 2008 (''GWFS Letter''); Heidi Stam, Managing Director and General Counsel, Vanguard, dated June 30, 2008 (''Vanguard Letter''); William A. Jacobson, Associate Clinical Professor, Cornell Law School, and Director, Cornell Securities Law Clinic, dated July 1, 2008 (''Cornell Letter''); Dale E. Brown, President and CEO, Financial Services Institute, dated July 1, 2008 (''FSI Letter''); Heather Traeger, Assistant Counsel, Investment Company Institute, dated July 1, 2008 (''ICI Letter''); Cheryl Tobin, Asst. Vice President, Insurance Counsel, Pacific Life Insurance Company

comments in a letter to the Commission.[10] The comments and FINRA's Response are discussed below.

A. Limiting Application of the Rule to Recommended Transactions

Several commenters supported FINRA's proposal to limit Rule 2821's application to ''recommended'' transactions,[11] generally indicating that the proposed change would: Make the rule consistent with other rules that have a suitability requirement; promote competition; and not detract from the rule's effectiveness because most variable annuity transactions involve a recommendation. Two commenters, however, disagreed with the approach, arguing, among other things, that registered representatives could falsely assert that an unsuitable transaction was not recommended.[12] FINRA acknowledged the concern, but responded that it would be mitigated by the requirement that broker-dealers implement reasonable measures to detect and correct circumstances in which transactions can be mischaracterized.[13] In addition, FINRA stated that when a transaction is truly initiated by a customer, actual or potential conflicts of interest are less likely, and thus there is a lesser need for heightened sales-practice requirements.[14]

Another commenter requested clarification that a non-recommended transaction includes a direct sale (*i.e.*, one in which no sales-related compensation is paid and no registered representative is involved).[15] FINRA responded that whether a transaction is recommended does not turn on whether it is a direct sale: Some firms use an Internet-based computer system to make ''recommendations'' without assistance from a registered representative, while others compensate registered representatives for transactions solely initiated by the customer.[16] FINRA also reiterated several factors relevant to determining when a particular communication would be deemed a recommendation, including: A communication's content, context and presentation; the tailoring of the communication to a certain customer or customers; and whether the communication was initiated by a person employed by the firm or by a computer program used by the firm.[17]

One commenter sought clarification of the rule's application to recommendations in the context of retirement plans.[18] FINRA's Response cited the rule's text, which states that the rule does not generally apply to transactions made in connection with specific employer-sponsored retirement plans except for recommendations made to an individual plan participant regarding a deferred variable annuity.[19] Furthermore, FINRA indicated that a member's ''generic communication to all plan participants indicating that the employer has chosen a deferred variable annuity as the funding vehicle for its retirement plan likely would not constitute a 'recommendation' triggering application of the proposed rule.'' [20] Finally, FINRA reiterated that the rule would not apply to plan-level decisions made by sponsors, trustees, or custodians of qualified retirement or benefit plans, regardless of whether a member has made a recommendation to an individual plan participant.[21]

B. Modifying the Starting Point for the Seven-Business-Day Review Period

Most commenters supported FINRA's proposal to have the seven-business-day period for principal review of the application begin on the day that an OSJ receives the application.[22] One commenter expressed the view that the proposal gives the broker-dealer too much time and that the time period should start when any office receives the application.[23] Some commenters stated that the time period for review should be longer,[24] and some indicated that there should be an exception to the time limitations when a customer consents to a further holding period.[25] FINRA responded that they regard seven business days after receipt by any OSJ as sufficient time in which to review an application.[26]

C. Supplementary Material

1. Forwarding of Customer Checks/Funds

Proposed SM.03 states that under certain conditions, a FINRA member may forward a customer's check or funds to the insurance company prior to principal approval.[27] One of those conditions is that the insurance company issuer agrees to ''(1) segregate the member's customers' funds in a bank * * * account * * * (set up as described in [Exchange Act] Rules 15c3–3(k)(2)(i) and 15c3–3(f)) to ensure that the customers' funds will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of the member, insurance company, or bank where the insurance company deposits such funds or any creditor thereof or person claiming through them and hold those funds either as cash or any instrument that a broker or dealer may deposit in its Special Reserve Account for the Exclusive Benefit of Customers * * *.''

The commenters on this provision generally viewed current insurer suspense account practices as sufficient but stated that the special account requirement would be feasible if modified.[28] For example, one commenter suggested that insurers be permitted to segregate funds in an account ''similar in form and function to a Reserve Bank Account under [Exchange Act] Rule 15c3–3(e).'' [29] This commenter also suggested that FINRA consider adopting exemptions from the SM.03 requirements depending on the treatment particular states afford to insurance company suspense accounts.[30]

FINRA's Response stated that during the period before the transaction is approved, when funds may need to be returned to the customer, it is important for a FINRA member to have reasonable assurances that the insurer will handle customer funds in a manner that provides at least as much protection as

to James Wrona, Associate Vice President and Associate General Counsel, FINRA, dated July 1, 2008 (''Pacific Life Letter''); Michael P. DeGeorge, General Counsel, NAVA, Inc., dated July 1, 2008 (''NAVA Letter''); Neal E. Nakagiri, President, CEO, CCO, NPB Financial Group, LLC, dated July 2, 2008 (''NPB Letter'') and Carl B. Wilkerson, Vice President & Chief Counsel, American Council of Life Insurers, dated August 20, 2008 (''ACLI Letter''). Unless otherwise noted, all letters are addressed to the Secretary or Acting Secretary of the Commission.

[10] FINRA's Response, *supra* note 7.

[11] *See* ACLI Letter, CAI Letter, ICI Letter, NAVA Letter, Vanguard Letter, T. Rowe Price Letter.

[12] *See* Cornell Letter and PIABA Letter.

[13] *See* FINRA's Response, *supra* note 7.

[14] *Id.*

[15] *See* Pacific Life Letter.

[16] *See* FINRA's Response, *supra* note 7.

[17] *Id.* (citing NASD Policy Statement Regarding Application of the NASD Suitability Rule to Online Communications, *NASD Notice to Members 01–23* (April 2001)).

[18] *See* GFWS Letter.

[19] NASD Rule 2821(a)(1).

[20] *See* FINRA's Response, *supra* note 7.

[21] *Id.*

[22] *See* ACLI Letter, CAI Letter, FSI Letter, ICI Letter, NAVA Letter, NPB Letter.

[23] *See* Pacific Life Letter.

[24] *See* ACLI Letter, CAI Letter.

[25] *See* ACLI Letter, CAI Letter, EquiTrust Letter, NAVA Letter.

[26] *See* FINRA's Response, *supra* note 7.

[27] NASD Rule 2821 initially prohibited broker-dealers from ever forwarding checks/funds prior to principal approval of the transaction. Most commenters to the original proposal favored allowing broker-dealers to forward checks/funds, but they differed regarding their views of FINRA's proposed requirements for allowing it.

[28] *See e.g.*, ACLI Letter, NAVA Letter, Pacific Life Letter, CAI Letter.

[29] *See* CAI Letter. Exchange Act Rule 15c3–3(e) applies to broker-dealers that transmit funds promptly and that do not hold those funds for periods longer than one business day. 17 CFR 240.15c3–3(e).

[30] *See* CAI Letter.

if those funds were handled by a broker-dealer that is permitted to hold customer funds.[31] Accordingly, FINRA declined to modify or eliminate the proposed requirements to maintain equivalent standards.[32]

In response to one commenter's question regarding whether the ''Special Account Requirement'' of SM.03 requires the segregation by the insurance company of customer funds from one broker-dealer from those of other broker-dealers,[33] FINRA indicated that it does not.[34] FINRA's Response further stated that the insurer could use one special account for the customers of all the broker-dealers with which it does business.[35]

One commenter asked whether an insurance company could return customer checks/funds to the broker-dealer rather than directly to the customer if the broker-dealer's principal rejects the transaction.[36] FINRA responded that the insurance company may make checks payable to the broker-dealer if the broker-dealer is permitted to hold customer funds.[37] If broker-dealers that are not authorized to hold customer funds receive checks from the insurance company, they should be payable to the customer. In those cases, FINRA stressed that broker-dealers must forward such checks to their customers ''promptly'' and keep an incoming and outgoing record of the customer checks, as well as any other funds that are remitted to the broker-dealer.[38]

Finally, one commenter expressed confusion regarding this provision, stating that ''the insurance company would necessarily have a claim for payment if an application is approved and a contract issued, while the member would necessarily have a claim for a return of the funds if the application is not approved and the contract is not issued.'' [39] FINRA responded that it did not intend to suggest that the funds had to remain in a segregated bank account of the type referenced in SM.03 in perpetuity, but only until such time as the insurance company is notified of the broker-dealer's approval and is provided with the application, or is notified of the broker-dealer's rejection of the application.[40]

2. Inquiries About Exchanges

One commenter supported FINRA's proposal to clarify, in Rule 2821(b)(1)(B)(iii) and SM.05, that an analysis of whether the customer has had another recent exchange should include exchanges at other broker-dealers, but suggested that broker-dealers should be required to do more than simply ask the customer whether he or she has had another exchange.[41] The commenter explained that variable annuity transactions can be complex and confusing, and that some customers might not understand that they had engaged in previous exchanges.[42]

FINRA responded that requiring broker-dealers to investigate whether the customer has in fact had another exchange at another broker-dealer is overly burdensome in light of the potential benefits. FINRA indicated that instances of customer confusion regarding whether or not an exchange had occurred would likely be the exception rather than the rule.[43] FINRA further noted that SM.05 requires that a broker-dealer determine whether a customer has had another exchange at that firm and that, solely for exchanges that occurred at other firms, is permitted to rely on a customer's response to an inquiry regarding possible exchanges by the customer at other broker-dealers.[44] In addition, FINRA reiterated the SM.05 requirement that broker-dealers document in writing both the nature of the inquiry and the response from the customer.[45] FINRA stated that it believes that this requirement would help ensure that broker-dealers ask customers about exchanges in a manner that is reasonably calculated to elicit accurate responses.[46]

D. Effective Date of the Proposed Amendments

Some commenters requested a delay in the effective date of the proposed rule change of between 12 and 18 months.[47] One commenter stated that the method by which the effective dates would be determined has been confusing.[48] Although FINRA believes that a delay of 12 to 18 months would be unreasonably long,[49] it nevertheless agreed to delay the effective date until 240 days following publication of the Regulatory Notice announcing Commission approval. FINRA will announce the effective date of the proposed rule change in a Regulatory Notice to be published no later than 60 days following Commission approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning whether the proposed rule change as modified by Amendment Nos. 1 and 2 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

[31] *See* FINRA's Response, *supra* note 7.

[32] *Id.*

[33] *See* NAVA Letter. NAVA also stated that, in its experience, ''unaffiliated broker-dealers do not forward customer funds prior to principal approval.'' *Id.* In this regard, FINRA noted that SM.03 allows a broker-dealer to forward checks/funds under certain circumstances prior to principal approval; it does not require it. Moreover, the Commission's previous exemptive order allowing firms to hold checks for up to seven business days to complete the principal review applies under the proposed amendments. *See* FINRA's Response, *supra* note 7.

[34] *See* FINRA's Response, *supra* note 7.

[35] *Id.*

[36] *See* CAI Letter.

[37] *See* FINRA's Response, *supra* note 7. As FINRA and the Commission previously have noted, ''Many broker-dealers are subject to lower net capital requirements under [Exchange Act] Rule 15c3–1 and are exempt from the requirement to establish and fund a customer reserve account under [Exchange Act] Rule 15c3–3 because they do not carry customer funds or securities.'' Securities Exchange Act Release No. 56376 (September 7, 2007), 72 FR 52400 (September 13, 2007). Although some of these firms receive checks from customers made payable to third parties, the Commission does not deem a firm to be carrying customer funds if it ''promptly transmits'' the checks to third parties. The Commission has interpreted ''promptly transmits'' to mean that ''such transmission or delivery is made no later than noon of the next business day after receipt of such funds or securities.'' *Id.* In conjunction with its approval of NASD Rule 2821, the Commission provided an exemption to the ''promptly transmits'' requirement as long as, among other things, the ''principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with [Rule 2821].'' *Id.* The Commission's exemptive order remains applicable notwithstanding the modification to the event that triggers the principal review period. *See* discussion in Section III.B, *supra* of the amendment to rule 2821(c) establishing the timing for principal review.

[38] *See* FINRA's Response, *supra* note 7.

[39] *See* NAVA Letter.

[40] *See* FINRA's Response, *supra* note 7. Under the rule as amended by Amendment No. 1, there could be delays between the time when a principal approves an application and the time when an insurer receives the approved application (*e.g.,* when a broker-dealer conveys principal approval to the insurer electronically but sends an approved application via regular mail), thereby creating a situation where the funds in a suspense account are released before the insurance company has received the application. Amendment No. 2 clarifies that the insurance company must receive both a notification of approval and the application before funds can be released from the suspense account.

[41] *See* PIABA Letter. The rule currently states that the broker-dealer must consider whether ''the customer's account has had another deferred variable annuity exchange within the preceding 36 months.'' The proposal would eliminate the reference to an ''account.''

[42] *Id.*

[43] *See* FINRA's Response, *supra* note 7.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *See e.g.,* ACLI Letter, CAI Letter.

[48] *See* CAI Letter II.

[49] *See* FINRA's Response, *supra* note 7.

Number SR–FINRA–2008–019 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2008–019. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2008–019 and should be submitted on or before May 13, 2009.

V. Discussion and Findings

After careful review of the proposal and consideration of the comment letters and FINRA's Response, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to FINRA.[50] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[51] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change, as amended, is reasonably designed to accomplish these ends by creating a mechanism through which policies and procedures that are designed to ensure that recommended variable annuity transactions are properly identified and subject to timely principal review are put in place. As FINRA noted, while most variable annuity transactions are ''recommended,'' whether by a registered representative or an Internet-based computer system, and thus would be subject to principal review, there are some broker-dealers that do not make any recommendations as part of a business model that provides lower cost products.[52] The Commission believes that principal review is less necessary when a particular variable annuity transaction is not recommended. Accordingly, the Commission believes that the rule change strikes the proper balance between investor protection and efficiency by requiring principal review of recommended transactions while, at the same time, removing an unnecessary impediment to the purchase of these investments by investors who do not need or seek a recommendation.

In addition, the Commission believes that FINRA struck a reasonable balance with regard to the timeframe during which variable annuity transactions must be reviewed by a principal. Requiring the seven-business-day review requirement to begin at the time that a signed and completed application is received by an OSJ will encourage the OSJ that received the application to route it, within a reasonable time, to the principal required to review it. We are not persuaded that the principal review clock should begin to run when any office of a broker-dealer receives an application because of the practical delays often associated with processing an application and routing it to the appropriate person. We also are not persuaded that the principal review clock should be delayed until a particular OSJ receives the application, because doing so could result in undue delays to the prompt processing and completion of an investor's transaction.

The Commission gave careful consideration to the comments raised regarding the forwarding of customer funds during the period when an application is under principal review. We believe that until a transaction has been approved or denied, segregation of customer funds in a special account similar in form and function as those described in Exchange Act Rules 15c3–3(k)(2)(i) and 15c3–3(f)[53] offers the best assurance that investors' funds will be safeguarded in a manner that most closely parallels the protective features of the Federal securities laws, and that investors in different products should receive similar treatment. Specifically, when an investor purchases a non-variable annuity investment through a broker-dealer, she is protected by the Securities Investor Protection Corporation in the event the broker-dealer becomes insolvent. Because insurance companies are subject to a different regulatory scheme than broker-dealers, including differences resulting from variation in State insurance laws, we believe deferred variable annuity investors are best protected by a rule that closely mimics the protections and safeguards governing other investors. Consequently, we believe that FINRA's proposed rule change strikes a fair balance between the practical needs of broker-dealers associated with transmitting funds to insurance companies and protecting investors from the possibility that an insurance company may become insolvent.

With regard to FINRA's proposed requirement that broker-dealers determine the number of prior customer exchanges, the Commission agrees with FINRA that it is reasonable and appropriate for a broker-dealer to be required to determine the number of exchanges that have occurred at the firm itself. We believe this burden should be minimal, in that the broker-dealer will have ready access to that information from its books and records. The Commission also believes that it is reasonable to rely on a customer's representations regarding exchanges conducted at other firms given that most customers are in a good position to know whether they have made any exchanges. While a customer's recollection of this information may not always be fully accurate, the burdens associated with requiring broker-dealers to obtain this information through other means outweigh the benefits of any potential improvement in accuracy. Moreover, this requirement is designed to help ensure that broker-dealers ask about customers' exchanges in a manner that is reasonable calculated to elicit accurate responses from customers

[50] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[51] 15 U.S.C. 78*o*–3(b)(6).

[52] *See* FINRA's Response, *supra* note 7.

[53] 17 CFR 240.15c3–3(k)(2)(i), 15c3–3(f).

when they are asked about exchanges at other broker-dealers.

Finally, given the rule's operational impact, we believe that it is appropriate for its effective date to be delayed by 240 days following publication of the Regulatory Notice announcing Commission approval. This should provide sufficient time for broker-dealers and any other affected parties to make necessary changes to their systems and procedures without undue further delay of the rule's implementation.

In approving Rule 2821, the Commission took note of the numerous examinations of, and enforcement actions against, broker-dealers involving the sale of variable annuity products.[54] We understood that many FINRA enforcement actions against broker-dealers involved unsuitable recommendations of variable annuities and noted that the rule was designed to curb these sales practice abuses.[55] Rule 2821 has been subject to a thorough notice and comment process, and these amendments to the rule respond directly to comments and questions raised by commenters. For that reason, we believe that it is appropriate to finalize the rule in order to provide broker-dealers and others affected by it with the clarity needed to make operational and systems changes required to implement the rule and achieve the investor protections for which it is designed. Accordingly, based on the foregoing reasons, the Commission believes that good cause exists, consistent with Sections 15A(b)(6)[56] and 19(b)(2)[57] of the Exchange Act, to approve the proposed rule change.

The Commission also finds good cause for approving the proposed rule change as modified by Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice in the **Federal Register.** Amendment No. 1 originally indicated that funds had to remain in a segregated bank account until such time as the insurance company is notified of the broker-dealer's approval or rejection of the application. Under the rule as amended by Amendment No. 1, there could be delays between the time when a principal approves an application and the time when an insurer receives the approved application (*e.g.,* when a broker-dealer conveys principal approval to an insurer electronically but sends an approved application via regular mail), thereby creating a situation where the funds in a suspense account are released before the insurance company has received the application necessary to issue the contract. Therefore, Amendment No. 2 clarifies that the insurance company must receive both a notification of approval and the application before funds can be released from the suspense account. Because these amendments do not significantly alter the proposed rule, which was subject to a full notice and comment period, the Commission finds that it is in the public interest to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, as soon as possible to expedite their implementation. Accordingly, the Commission finds that there is good cause, consistent with and in furtherance of the objectives of Sections 15A(b)(6)[58] and 19(b)(2)[59] of the Exchange Act, to approve Amendment Nos. 1 and 2 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[60] that the proposed rule change (SR–FINRA–2008–019), as modified by Amendment Nos. 1 and 2, be and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–9159 Filed 4–21–09; 8:45 am]

BILLING CODE 8010–01–P

[54] *See* Securities Exchange Act Release No. 56375 (September 7, 2007), 72 FR 52403, 52411 (September 13, 2007).

[55] *Id.*

[56] 15 U.S.C. 78*o*–3(b)(6).

[57] 15 U.S.C. 78s(b)(2).

[58] 15 U.S.C. 78*o*–3(b)(6).

[59] 15 U.S.C. 78s(b)(2).

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0024]

Financial Literacy Research Consortium Request for Applications (RFA); Program Announcement No. SSA–ORP–09–1

AGENCY: Social Security Administration.

ACTION: Notice and request for applications.

SUMMARY: Social Security benefits are a key foundation in providing income security for millions of Americans. However, they are intended to complement other sources of income wherever feasible, such as pensions, tax-deferred retirement savings accounts, or personal savings. The current economic climate means that many Americans are now in danger of having insufficient savings for retirement and other life events. This situation occurs at a time when workers also need to take increasing responsibility for their savings decisions as many employers are moving from defined benefit to defined contribution plans.

As described in the new SSA Agency Strategic Plan, we believe we have a special responsibility to help Americans of all working ages to understand the role of Social Security benefits and the need for Americans to save as they plan for retirement and other life events. More fundamentally, we also need to educate the public about the role of Social Security as one of the foundations of household income in the event of retirement, disability, or death. This includes a focus on key decisions such as when to stop working and when to take retirement benefits.

The Financial Literacy Research Consortium (FLRC) will be an innovative, non-partisan multidisciplinary research and development (R&D) initiative to develop products to better inform the public about key financial literacy topics related to retirement savings and planning. We are interested in developing products—such as Internet tools as well as print materials—that help foster retirement and other savings strategies at all stages of the life cycle. Products may be tailored to new entrants to the workforce, mid-career workers, those approaching retirement, and those in retirement who must successfully manage retirement assets. In addition, as part of the FLRC, we are seeking some (but not exclusive) focus on educational products to help low and moderate income populations successfully plan and save for retirement and other life events, as well as products that improve understanding of Social Security's programs. We are also interested in potentially evaluating optimal distributional channels for some or many of these products.

Due to our existing relationship with the public, we are uniquely positioned to encourage saving. We have over 1,300 field offices across the country, a Web site that received over 88 million visits in 2008, a Social Security Statement that is sent to approximately 150 million workers every year and professional public affairs staff around the country. We may distribute FLRC products (or revised products) to better inform the public about retirement savings topics. In addition, the FLRC will make available to the public products developed by the FLRC that may be of

value to the broader savings and retirement planning community.

We are announcing the solicitation of applications for a cooperative agreement to compete for a Financial Literacy Research Consortium to help inform the public about financial literacy and savings. Section 1110 of the Act, 42 U.S.C. 1310. In the first year, the Consortium will be composed of no more than two research centers. The centers will have a combined annual budget of approximately $5.0 million. We expect to fund the centers for a period of 5 years, contingent on an annual review process and continued availability of funds.

DATES: The opening date of this announcement is the date of publication. The closing date for receipt of cooperative agreement applications under this announcement is June 6, 2009.

Notice/Letter of Intent: Prospective applicants are asked to submit, preferably with an e-mail attachment, within 30 days of publication of this RFA, an e-mail, fax, postcard or letter of intent that includes (1) the program announcement number (SSA–ORP–09–1) and title (Financial Literacy Research Consortium); (2) the name of the agency or organization that is applying and (3) the name, mailing address, e-mail address, telephone number and fax number for the organization's contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application.

The purpose of the notice of intent is to allow our staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (202) 358–6355 or mailed to Social Security Administration, Office of Retirement Policy, 500 E St., SW., Washington, DC 20254. Attn: David Rogofsky.

ADDRESSES: We require that applicants submit an electronic application through *www.grants.gov* for Funding Opportunity Number SSA–ORP–09–1. The *www.grants.gov* ''Get Registered'' Web page is available to help explain the registration and application submission process. In addition, new Federal grant applicants may find the Grants.gov ''Registration Brochure'' on the above noted Web site to be helpful. Also, as questions come in from this RFA, we will be posting a Word attachment FAQ on the Office of Retirement Policy Web site (*http://www.ssa.gov/retirementpolicy*). Questions can be submitted to *flrc@ssa.gov* and answers will be posted on the Web site as they become available. Therefore, all potential applicants should continue to monitor the Office of Retirement Policy Web site frequently in order to ensure that they have the latest updates of FAQs.

If you experience problems with the steps related to registering to do business with the Federal government or application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov,* 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Audrey Adams, (410) 965–9469; Mary Biddle, (410) 965–9503; Ann Dwayer, (410) 965–9534; Phyllis Y. Smith (410) 965–9518. If extenuating circumstances prevent you from submitting an application through *www.grants.gov,* please contact the SSA Grants Management Team for possible prior approval to download, complete, and submit an application by mail. Should we grant such approval, the downloadable application package will be available at *http://www.ssa.gov/oag.* Please fax inquiries regarding the application process to the Grants Management Team at (410) 966–9310 or mail to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORP–09–1, 1st Floor, Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. To ensure receipt of the proper application package, please include program announcement number SSA–ORP–09–1 and the date of this announcement.

FOR FURTHER INFORMATION CONTACT: For nonprogrammatic information regarding the announcement or application package, contact: SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd., 1st Floor Rear Entrance, Baltimore, MD 21244. Contact persons are: Audrey Adams, Grants Management Officer, telephone (410) 965–9469, Mary Biddle, (410) 965–9503; Ann Dwayer, (410) 965–9534; Phyllis Y. Smith, (410) 965–9518. The fax number is (410) 966–9310.

For information on the program content of the announcement/application, please submit a question to the mailbox *flrc@ssa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Funding Opportunity Description

A. Purpose

We are announcing the solicitation of applications for a cooperative agreement to compete for a Financial Literacy Research Consortium (FLRC). Section 1110 of the Act, 42 U.S.C. 1310. We seek applications in support of the FLRC that will serve as a national resource fostering innovative R&D on how to encourage savings through greater financial literacy, being cognizant that Social Security income is a fundamental source of retirement savings for many, and thus a cornerstone of our involvement.

The FLRC may consist of up to two research centers. The Consortium's purpose is to benefit the public through the following:

(1) Research, development and evaluation. We expect the FLRC to plan, initiate, and maintain a multi-disciplinary R&D program of high quality. This R&D will result primarily in educational products that encourage savings and effective retirement planning, including planning for the key decisions around retirement timing and benefit receipt. It may also result in research-based recommendations on the architecture or structure of programs or mechanisms that encourage use of public and private sector savings plans.

(2) Dissemination. The FLRC will disseminate research findings and product prototypes through center Web sites and other media to inform the public as well as the broader retirement savings community including practitioners, policymakers and the public.

(3) SSA's Rights in Data. The Federal Acquisition Regulation (FAR) incorporates into the cooperative agreement the Government's rights in data. 48 CFR 52.227–14. Under this cooperative agreement, references to the ''contract'' in the FAR must refer to this cooperative agreement, and references to the ''Contractor'' in the FAR must refer to the agency's FLRC cooperative agreement partner(s).

The provision provides, among other things, that the agency will have unlimited rights in data first produced in performance of the cooperative agreement, which means that we will have the right, as to this data, to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and display it publicly, in any manner and for any purpose. 48 CFR 52.227–14(1). In addition, the agency can permit others to have the same rights just described.

Under FAR, the agency's FLRC cooperative agreement partner(s) will have the right to release to others, reproduce, distribute, or publish any data first produced or specifically used by the agency's FLRC cooperative agreement partner(s) in performance of this cooperative agreement, unless provided otherwise under this regulation. 48 CFR 52.227–14(b)(2)(i). Please refer to the FAR for a complete description of the parties' rights in data.

B. The Role of the Center(s)—The Center(s) Will Address the Following Key Research Questions Through Their R&D Initiatives

1. Key Product Research Questions

(a) How to encourage retirement savings for new labor force entrants in employer-sponsored retirement plans, individual retirement plans, or other savings vehicles. Time is a critical variable in amassing retirement savings and consequently, workers' initial savings decisions upon entering the labor force can have lasting effects. We seek R&D on products that can help young workers make effective savings decisions at an age when income adequacy in retirement may appear to be a distant concern. Work in this area includes identifying sound savings principles and effective social marketing/media strategies for those entering the labor force.

A potential near term future publication on this might be a ''Welcome to the Workforce Guide'' provided to every new wage-earner. Work in this area might also include research-based recommendations on how we can clearly communicate issues regarding future solvency to accurately and effectively convey that Social Security benefits will remain an important component of the retirement savings strategies of many individuals.

(b) How to encourage the protection of retirement resources for mid-career individuals (*e.g.,* limiting lump-sum distributions from employer plans upon job changes, responsible use of loan provisions within employer-provided plans, limiting overall debt levels). Workers who have maintained adequate savings throughout the first half of their careers must take care to ensure these retirement assets are protected and continue to grow until retirement. In addition, workers who have not maintained adequate savings may still have time to make corrections. We are interested in R&D on educational products that help ensure against the diminishment or loss of these critical retirement resources. Work in this area includes: considerations of asset management and work strategies that can affect savings, pensions, and Social Security benefits.

(c) How to encourage work and retirement decisions for near-retirees that ensure adequate retirement income. Workers' retirement decisions can substantially affect their well-being later in life, regardless of their previous savings behavior. We are interested in R&D on effective retirement planning educational products for this group. Work in this area includes: Effects (both separately and together) of starting Social Security benefits at different ages; pension distribution options; and private asset management.

(d) How to encourage effective resource management for current retirees in order to prevent hardship late in life. Financial literacy encompasses not only the accumulation phase of asset management, but also the decumulation phase. We are interested in R&D on appropriate educational resource management products to help retirees maintain adequate income throughout retirement. Examples of this includes: Managing private savings, pensions, and other assets during retirement (either in isolation or as a whole), such as annuitization options.

(e) How to encourage and design effective retirement savings strategies for the low- and moderate-income populations (young and mid-career). Conventional savings strategies are often inappropriate for the low-income population. We are interested in R&D on effective educational products for helping these individuals save for retirement. Work in this area includes: Developing plan designs for savings needs that are not met by restricted use vehicles (*e.g.,* IRAs) and developing plan designs and communicating about investment strategies for low-income persons who are more likely to have immediate and unforeseen financial needs; communicating about opportunities for saving for recipients of means-tested public assistance programs; developing educational products appropriate for persons with limited access to workplace savings vehicles and mainstream financial institutions.

(f) Additionally, the FLRC may involve financial literacy research related to specific programs or features of programs relevant to the agency. We are interested in R&D that relates to Social Security Disability Income (SSDI) and Supplemental Security Income (SSI) recipients. Potential future products in these areas might include a ''Guide to Disability Benefits,'' an innovatively designed outreach tool to help individuals understand SSDI and SSI disability benefits and the disability determination process. Other products could focus on savings topics relevant to the disabled population or on work incentives in the SSDI or SSI programs (*e.g.,* a ''Guide to Work Incentives'').

There may be several subgroups within the target audiences mentioned above, for example, those with limited reading skills. To most effectively develop products to reach target audiences and potential subgroups, applicants are encouraged to consider teaming with partners who have expertise in conducting research with disadvantaged and hard-to-reach populations, including low-income populations, youth with disabilities and adults with disabilities.

We are also interested in R&D on products that would promote better understanding of complex provisions of Social Security; for instance, a potential product could be a ''Guide to the WEP (Windfall Elimination Provision)/GPO (Government Pension Offset).''

2. Product Development and Testing

The center(s) will develop products designed to address the five key research questions in ways that will engage the public. Initial product development will be guided primarily by qualitative research such as focus groups and in-depth, unstructured individual interviews, but it could include relevant quantitative survey

research as well that assesses increased knowledge and changes in behavior. Additional quantitative research might be utilized in subsequent evaluation of the products, particularly within the context of specific potential distributional channels. The key goal of the FLRC is not only to develop compelling products, but also to get these products into the hands of the public. Evaluation of the most effective ways to do this will be of great importance.

Products generated by the FLRC center(s) can include:

(a) Innovative web-based interactive technologies and social networking applications.

(b) Print publications which are innovative and compelling in terms of graphics, layout, or messaging.

(c) Development of research-based recommendations on the most effective distributional channels for the above products. Channels could include not only our distributional resources such as the annual statement, teleservice centers and field offices, but also employers, non-profit national and community organizations, and public libraries.

(d) Development of research-based recommendations on optimal architecture, plan design, or plan defaults. Recommendations would be developed and refined through qualitative research and possibly large-scale, randomized experiments.

(e) Development of research-based recommendations on optimal combinations of multiple sequenced interventions—possibly even including some forms of personalized assistance—in consumer outreach and education. Advertising and social marketing principles hold that multiple exposures are often necessary for consumers to gain awareness and change behavior. Recommendations would be developed and refined through qualitative research and possibly large-scale, randomized experiments.

(f) Relevant research papers on key issues related to financial literacy. It is expected that as a result of the above types of products being researched and tested, one further outcome would be papers disseminated to the broader research and policy community on testing results. This would enhance the broader knowledge base about financial literacy. In addition, there might be a need for basic research in a previously unexamined area of financial literacy or analysis that would identify policy changes that would support financial literacy and savings. Although we acknowledge that there might be a compelling rationale for centers to produce basic research or policy analysis papers, prospective applicants should be aware that we are looking for these papers to constitute no more than 15% of total center funding.

(g) Development of an experimental recommended audience segmentation strategy within or even across multiple age groups. This would group those with similar attitudes and behaviors toward retirement saving, within more broadly defined age bands, in order to tailor products that each segment would find compelling.

(h) In general, evaluation includes: Focus groups, in-depth interviews, observational research, surveys, and larger scale randomized experiments.

(i) To optimally develop and test products, it is anticipated that a multidisciplinary approach might be utilized in some, many, or all instances. Examples of the relevant disciplines that could be included in the mix are: Economics (behavioral, consumer and family economics); social marketing; marketing science; psychology; sociology.

3. Dissemination of Products and Findings

At our discretion, we may distribute or arrange to distribute products or copies of products developed by the center(s). We may also seek further testing and research within or outside of the FLRC before making a determination about distribution. We may make changes to the FLRC product as we deem necessary for its continued use. See 48 CFR 52.227–14.

In addition, we expect that the center(s) will become a focal point for the public, including the broader saving and financial planning community (retirement plan sponsors, human resources departments, government agencies, and others). The center(s) will have a dedicated Web site on which all products and research results will be available for use, download, and distribution by this broader community.

We realize that effective R&D encompassing all of the above may be well beyond the current capacity and scope of any one center. Therefore, prospective centers are strongly encouraged to engage partners and affiliates to complement and supplement their own areas of expertise. Similarly, a center may choose to concentrate on a few of the research questions and on priority target demographic audience segments. The goal of the Consortium as a whole is to produce high-quality research and educational products covering the range of objectives discussed above.

4. Tasks

Each center will perform the following tasks:

(a) Research, development (including educational materials and distributional channel testing), and dissemination of findings. Each center will be expected to plan, initiate, and maintain a research program that meets the highest standards of rigor and objectivity. Applicants need to describe their quality assurance standards. We reserve the right to review all publications created using Consortium funding prior to publication or dissemination.

Joint research between Consortium and our researchers is encouraged, as is collaboration with other organizations interested in financial literacy. In instances where there is joint research with our researchers, we expect that there would be joint authorship of research papers. Federal employees cannot receive any funding support for collaborations. Planning and execution of the research program must always consider the policy implications of research findings. However, we also consider it appropriate, for example, to pursue advances in research techniques, when related to primary objectives of the Consortium.

In order to ensure the practical utility of the centers' R&D activities, a group of eight nationally recognized scholars or experts, as well as financial services and social marketing practitioners from both the non-profit and business sectors must periodically review the center's activities. (See Part I, Section C, Center Responsibilities.)

(b) Dissemination. An important feature of each center's responsibilities is making knowledge and information available to the public, including but not limited to the broader retirement savings community. The centers will be expected to host a Web site as a go-to resource for research, recommendations, and prototypes of practical products and distributional channels. In addition, the centers will be expected to organize conferences, workshops, lectures, seminars, or other ways of sharing current research activities and findings. The Consortium will hold an annual conference on issues related to financial literacy, with organizational responsibility rotating among the centers if there is more than one center in the consortium. The centers will work with us to produce a conference agenda. The conference will be held in Washington, DC. The hosting center will also have the responsibility for preparing and distributing a bound volume of conference papers and related materials to conference participants.

(c) Reporting. Every three months during the award period, the grantee will produce a quarterly report of progress. The grantee's quarterly progress report should provide a concise summary of the progress made towards completion of activities in the annual work plan. The grantee should pay particular attention in the report to achieving any milestones set forth in the work plan, delays in achieving milestones, and the affect of delays on the final product. Details regarding the format of quarterly progress reports will be provided in the FLRC Terms and Conditions at the time of award. In addition to the regular reporting, the grantee will provide ad hoc and timely ''hotline'' reports on any significant issues that arise with respect to management and implementation of the work.

C. Responsibilities

1. Center Responsibilities

The centers have the primary and lead responsibility to define objectives and approaches; plan research, conduct studies, and analyze data; design products; and publish results, interpretations, and conclusions of their work.

Occasionally, we will request quick turnaround projects from the FLRC. These projects include: Commenting on our research plans, providing critical commentary on research products, conducting research, composing policy briefs, performing statistical analyses, pulling together key research findings and recommendations in PowerPoint presentations, developing products, organizing research dissemination opportunities such as seminars and workshops and other activities designed to inform the agency's R&D initiatives. Funding for these as well as other related activities should be included in the budget narrative at a level of $200,000. The agency can raise the ceiling above $200,000 for quick turnaround projects if both need and funds exist. For qualitative research, assuming the materials were ready to be tested, quick turnaround would be defined as focus groups taking place within three weeks to one month of task order award, with top line (executive summary—summary of findings) reports to be delivered within one week after research is concluded. For quantitative research, a quick turnaround might involve an online research panel. Therefore, prospective applicants should ensure that they have the capability of bringing on skilled, relevant partners who could accommodate this type of timeframe, if they currently do not have the in-house capability to do so.

Jointly with us, each center will select approximately eight nationally recognized scholars or experts and financial services/social marketing practitioners from the non-profit and business sectors who are unaffiliated with any center to provide assistance in formulating the center's research agenda and advice on implementation. Each center must select four scholars/practitioners or experts, and we will select four scholars/practitioners. Efforts will be made in selecting the scholars/practitioners to ensure a broad range of academic disciplines and viewpoints. Funded under this agreement, the scholars/practitioners must meet once a year at the FLRC Annual Conference in Washington, DC. On occasion, all centers' scholars/practitioners will meet jointly to evaluate and provide advice on Consortium objectives and progress. Further, the centers may contact the scholars/practitioners throughout the year for suggestions regarding center activities. The agency's Project Officer or representative will participate in all meetings.

2. SSA Responsibilities

We will be involved with the Consortium in jointly establishing research priorities and dates to accomplish the objectives of this announcement. We, or our representatives, will provide the following types of support to the Consortium:

(a) Consultation and technical assistance in planning, operating, and evaluating the Consortium's activities.

(b) Information about our programs, policies, and research priorities.

(c) Assistance in identifying our information and technical assistance resources pertinent to the centers' success.

(d) Review of Consortium activities and collegial feedback to ensure that objectives and award conditions are being met. We may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, if the awardee materially fails to comply with the terms and conditions of the cooperative agreement, if the awardee does not meet technical performance requirements, or the project is no longer relevant to the agency. We will promptly notify the awardee in writing of the determination and the reasons for suspension or termination together with the effective date. We reserve the right to suspend funding for individual projects in process or in previously approved research areas or tasks after granting awards.

In general, we seek organizations with demonstrated capacity for providing quality innovative R&D, and working with government policymakers.

II. Award Information

A. Type of Award

All awards made under this program will be made in the form of a cooperative agreement. A cooperative agreement, as distinct from a grant, anticipates substantial involvement between the agency and the awardee during the performance of the project. A comprehensive annual review process will allow us to evaluate, recommend changes, and approve each center's activities. Our involvement may include collaboration or participation in the activities of the centers as determined at the time of award. The terms of the award are in addition to, not in lieu of, otherwise applicable guidelines and procedures. The issuance of the terms occurs along with the notice of award.

The grantee must apply to continue the cooperative agreement in order to receive funds in subsequent years of the 5-year agreement. The grantee will produce a continuation application, subject to review and approval by us. The continuation application should clearly describe a set of research, and dissemination activities that best address the priorities of the agency. We will engage in a dialogue with grantees throughout the award period regarding research topics. Based on that dialogue, we will provide the grantee with guidance (in writing) on the agency's research priorities for the subsequent continuation cycle.

B. Availability and Duration of Funding

1. Approximately $5.0 million will be available to fund the initial 12-month budget period of a proposed five-year cooperative agreement(s) pursuant to the announcement.

2. Applicants must include detailed budget estimates for the first year, assuming a funding level of $5.0 million. If an applicant receives an award under the FLRC for less than $5.0 million, the agency and the applicant will jointly renegotiate research priorities.

3. The amount of funds available for the cooperative agreement in future years has not been established. Legislative support for continued funding of the Consortium cannot be guaranteed and funding is subject to future appropriations and budgetary approval. We expect Consortium support during future fiscal years at an

annual level of approximately $5 million.

4. The announcement allows for the unequal division of funds among multiple chosen centers.

5. Additional funds may become available from the agency or other Federal agencies in support of Consortium projects.

6. Initial awards, pursuant to this announcement, will be made on or about September 15, 2009.

Although we anticipate two awards, nothing in this announcement restricts our ability to make more or fewer awards, to make an award of lesser amount, or to add additional centers to the FLRC in the future. Further, we are not required to fund all proposed Consortium activities in any year. We will review all proposed activities annually.

C. Letter of Intent

Prospective applicants must submit a letter of intent by May 7, 2009, which includes (1) this program announcement number and title; (2) a brief description of the proposed center; (3) the name, postal and e-mail addresses, telephone and fax numbers of the Center Director; and (4) the identities of the key personnel and participating institutions. The letter of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The sole purpose of the letter of intent is to allow our staff to estimate the potential review workload and avoid conflicts of interest in the review. The letter of intent should be sent to: SSA, Office of Retirement Policy, 500 E Street, SW., Washington, DC 20254, Attention: David Rogofsky.

III. Eligibility Information

A. Eligible Applicants

We are seeking applications from domestic Institutions of Higher Education, Non-Profit organizations, Commercial organizations, Federal and State Governments, and Native American tribal organizations. A research team may consist of organizations, individuals, or institutions that are geographically distant, to the extent that the research design requires and accommodates such arrangements. Nothing in this announcement precludes non-academic entities from being affiliated with an applicant.

No cooperative agreement funds may be paid as profit to any cooperative agreement recipient. For-profit organizations may apply with the understanding that no funds may be paid as profit. Profit is considered as any amount in excess of the allowable costs of the award recipient.

In accordance with an amendment to the Lobbying Disclosure Act, popularly known as the Simpson-Craig Amendment, those entities organized under section 501(c)4 of the Internal Revenue Code that engage in lobbying are prohibited from receiving Federal cooperative agreement awards.

B. Cost Sharing

We will not provide a center's entire funding. Recipients of our cooperative agreement are required to contribute a non-Federal match of at least 5 percent toward the total approved cost of each center. The total approved cost of the project is the sum of the Federal share (maximum of 95 percent) and the non-Federal share (minimum of 5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

C. Other

Each center director must have a demonstrated capability to organize, administer, and direct the center. The director will be responsible for the organization and operation of the center and for communication with us on scientific and operational matters. The director must also have a minimum time commitment of 25 percent to Consortium activities. Racial/ethnic minority individuals, women, and persons with disabilities are encouraged to apply as directors. Submission of a list of previous grants and cooperative agreements held by the director is required, including the names and contact information of each grant's and cooperative agreement's administrator. In addition to the director, skilled personnel and institutional resources capable of providing a strong research, development and testing base in the specified priority areas must be available. The institution must show a strong commitment to the Consortium's support. Such commitment may be provided as dedicated space, salary support for investigators or key personnel, dedicated equipment or other financial support for the proposed center.

IV. Application and Submission Information

A. Overview

This part contains information on the preparation of an application for submission under this announcement and the forms necessary for submission. Potential applicants should read this part carefully in conjunction with the information provided in Part I.

We anticipate that the applicant will have access to additional sources of funding for some projects and arrangements with other organizations and institutions. The applicant (including the center Director and other key personnel) must make all current and anticipated related funding arrangements (including contact information for grant/contract/cooperative agreement administrators) explicit in an attachment to the application (Part IV, Section D). As part of the annual review process, this information will be updated and reviewed to limit duplicative funding for center projects.

B. Availability of Application Forms

The application kit is available at *www.grants.gov*. For information regarding the application package, contact: SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd, 1st Floor Rear Entrance, Baltimore, MD 21244. Contact person is Phyllis Y. Smith, Chief, Grants Management Office, telephone (410) 965–8518, e-mail: *Phyllis.Y.Smith@ssa.gov*. The fax number is (410) 966–9610. To request an application kit for those without Internet access or for those experiencing extenuating circumstances preventing the submission of an electronic application, contact the Grants Management Office as mentioned above.

When requesting an application kit, the applicant should refer to the program announcement number SSA–ORP–09–1 and the date of this announcement to ensure receipt of the proper application kit.

As questions arise, an FLRC FAQ attachment in Word will be posted and revised on the Office of Retirement Policy Web site (*http://www.ssa.gov/retirementpolicy*). This will enable us to respond to questions about this RFA from interested parties.

C. Content and Organization of Technical Application

The application must begin with the required application forms and a three-page (double-spaced) overview and summary of the application. Staff resumes should be included in a separate appendix.

Budget Narrative: In addition to providing an explanation of the budget categories specified in the required forms, the budget narrative must also link the R&D and administration to the center's funding level. The special instructions attachment of the application kit provides information on the distribution and presentation of budget data. Though we believe that all

of the stated goals and objectives are important, we expect that the substantial majority of funds will support R&D. In addition, allocation of funds for occasional agency requested activities is required (described in Part I, Section C–1).

Also, this section should include documentation of the availability, potential availability, or expectation of other funds (from the host institution, universities, foundations, other Federal agencies, etc.) and the use of these funds. When contemplating additional funding, applicants must note whether the host institution is donating the funding, is in-hand from another funding source, or applied for from another funding source. Formal commitments for the 5 percent, non-Federal, minimum budget share should be highlighted in this section.

Seeking additional support from other sources is encouraged. However, funds pertaining to this announcement must not duplicate those received from other funding sources.

Project Narrative: The core of the application must contain five sections, presented in the following order:

(1) A brief (not more than 30 pages) background environmental scan and situation analysis of the key current financial literacy issues and trends—with an emphasis on retirement savings—as they pertain to the priority target audience segments to be addressed by the proposed center. The analysis should cover the general state of savings strategies, current educational products and distributional channels (uptake, utilization, etc) targeted to these audiences. The analysis should discuss concisely, but comprehensively, important priority R&D initiatives based on either/both current key noted gaps in current efforts, or on emerging societal trends that require new ways of reaching the public.

(2) A research, development, and evaluation prospectus for a five-year research agenda, outlining the major research themes to be investigated over the next five years. In particular, the prospectus will describe the activities planned for the priority research areas and other additional R&D ideas proposed by the applicant. The prospectus should follow from the background analysis section, and it should detail how the proposed R&D would plan to result in products that would be innovative, engaging, and compelling to several or all of the target audiences, while reaching their intended audiences through effective distributional channels. The prospectus should be clear on how the proposed agenda and products do not duplicate research or products currently available in the public and private sectors.

The prospectus must include detailed descriptions of individual research projects expected in the center's first year of operation. The special instructions attachment of the application kit provides guidelines for project proposals. The prospectus should be specific about long-term research themes and projects. The lines of research described in the prospectus should be concrete enough that project descriptions in subsequent research plan amendments can be viewed as articulating a research theme discussed in the prospectus. An application that contains an ad hoc categorization of an unstructured set of research projects, rather than a set of projects that strike a coherent theme, will be judged unfavorably.

Note: Once we have selected up to two successful FLRC applicants, we will review the FLRC research agenda and determine research priorities. This may include the addition, modification, or removal of proposed research projects. After review, each center will submit to us a revised research plan and budget. The research plan will be periodically reviewed and revised as necessary. The application should discuss how the centers select research projects to propose, including involvement of the outside scholars/practitioners, the agency, and other advisors and participants in the consortium.

(3) A prospectus for dissemination of research findings, including ways to reach a broad audience of the retirement savings community. Dissemination plans should detail the proposed center Web site and conferences.

(4) A staffing and organization proposal for the center, including an analysis of the types of background needed among staff members, the center's organizational structure, and linkages with the host institution and other organizations. In this section, the applicant should specify how it will ensure an effective approach to R&D and where appropriate, identify the necessary links to experts engaged in outreach and education.

The applicant should identify the center Director and key senior research staff. Full resumes of proposed staff members must be included as a separate appendix to the application. Each proposed staff member must indicate the time commitment to the center and other commitments. The application should specify how administrative arrangements would be made to minimize start-up and transition delays. Note that once we award the cooperative agreement, changes in key staff will require prior approval from us. The kinds of administrative and tenure arrangements, if any, the center proposes to make should also be discussed in this section. In addition, the authors of the application and the role that they will play in the proposed center must be specified.

If the applicant envisions an arrangement of several universities or entities, this section should describe the specifics of the relationships, including leadership, management, and administration. The staffing proposal should pay particular attention to discussing how a focal point for R&D will be maintained given the arrangement proposed. The applicant should also discuss the criteria for selection, and expected contribution of the outside scholars/practitioners.

The application should provide an organizational experience summary of past work at the institution proposed as the location (or the host) of the center that relates directly or indirectly to the research priorities of this request. This discussion should include more than a listing of the individual projects completed by the individuals who are included in the application. The discussion should provide a sense of institutional commitment to R&D on issues involving financial literacy. The application must list in an appendix appropriate recent or current research projects, with a brief research summary, contact person, references, and address and telephone numbers of references. This section should also discuss the experience of the research staff in working with the government agencies and their demonstrated capacity to provide relevant support to these agencies.

D. Components of a Complete Application

A complete application package consists of one electronic application. It should include the following items:

(1) Project Abstract/Summary (not to exceed three pages);

(2) Table of Contents;

(3) Part I (Face Sheet)—Application for Federal Assistance (Standard Form 424);

(4) Part II—Budget Information—

(a) Form SF–424A—Sections A through F

(b) Form SSA SF424 Section G—Personnel

(5) Budget Narrative for Section B—Budget Categories;

(6) Copy of the applicant's approved indirect cost rate agreement, if appropriate;

(7) Part III—Project Narrative. The project narrative should be organized in five sections:

(a) Background Environmental Scan and Situation Analysis

(b) Research, Development, and Evaluation Prospectus

(c) Dissemination Prospectus,

(d) Staffing Proposal Including Staff Utilization, Staff Background, Organizational Experience, and Partnerships with other organizations.

(8) Assurances—Form SF–424B;

(9) Disclosure of Lobbying Activities, Form SF–LLL, if applicable.

(10) Any appendices/attachments; and

(11) Supplement to Section II—Key Personnel.

E. Guidelines for Application Submission

These guidelines should be followed in submitting applications:

(1) All applicants requesting our funds for cooperative agreement projects under this announcement must submit the standard forms provided in the application kit.

(2) The application must be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award.

(3) Length: Applications should be as brief and concise as possible, but ensure successful communication of the applicant's proposal to the reviewers. The Project Narrative portion of the application may not exceed 100 double-spaced pages (excluding the resume and outside funding appendices), equivalent to being typewritten on one side using standard (8½″ x 11″) size paper and 12-point font. Attachments that support the project narrative count within the 100-page limit. Attachments not applicable to the project narrative do not count toward this page limit.

(4) Attachments/Appendices, should only be included to provide supporting documentation.

(5) On all applications developed by more than one organization, the application must identify only one institution as the lead organization and the official applicant. The other(s) can be included as sub-grantees or subcontractors.

F. Submission Dates and Times

Applicants must submit applications through *www.grants.gov* by the closing date of June 6, 2009. However, when the SSA Grants Management Team approves the submission of a mailed application due to extenuating circumstances, applications may be mailed or hand-delivered to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORP–09–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

(1) Received from Grants.gov on or before the deadline date; or

(2) Received at the above address on or before the deadline, when a mailed application has been authorized by the Grants Management Team; or

(3) Postmarked by June 6, 2009 when a mailed application has been authorized by the Grants Management Team. Packages approved for mailing must be sent through the U.S. Postal Service or by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private metered postmarks are not acceptable as proof of timely mailing.

Applications that do not meet the above criteria will be considered late applications. We will not waive or extend the deadline for any applicant unless we waive or extend the deadline for all applicants. We will notify each late applicant of non-application consideration.

Letters of intent, which are optional, are requested by May 7, 2009. See Part II, Section C for details.

G. Intergovernmental Review

Executive Order 12372 and 12416—Intergovernmental Review of Federal Programs

This program is not covered by the requirements of Executive Order 12372, as amended by Executive Order 12416, relating to the Federal policy for consulting with State and local elected officials on proposed Federal financial assistance.

(Catalog of Domestic Federal Assistance: Program No. 96.007, Social Security—Research and Demonstration)

H. Funding Restrictions

There will be limitations concerning allowable construction expenses. Submitted budgets may include minor construction expenses, such as alterations and renovations. This could include work required to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it may be more effectively used for the project. Alteration and renovation may include work referred to as improvements, conversion, rehabilitation, remodeling, or modernization, but is distinguished from construction and large-scale permanent improvements.

Awards will not allow reimbursement of pre-award costs.

I. Other Submission Requirements

We require that applicants submit an electronic application through *www.grants.gov* for Funding Opportunity Number SSA–ORP–09–1. If you experience problems with the steps related to registering to do business with the Federal government or application submission, your first point of contact is the Grants.gov support staff at *support@grants.gov,* 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Audrey Adams, 410–965–9469; Mary Biddle, 410–965–9503; Ann Dwayer, 410–965–9534; Phyllis Y. Smith, 410–965–9518.

If extenuating circumstances prevent you from submitting an application through *www.grants.gov,* please contact the SSA Grants Management Team for possible prior written approval to download, complete, and submit an application by mail. Should we grant such approval; the downloadable application package will be available at *http://www.ssa.gov/oag.* Please fax inquiries regarding the application process to the Grants Management Team at 410–966–9310 or mail to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, Attention: SSA–ORP–09–1, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. To ensure receipt of the proper application package, please include program announcement number SSA–ORP–09–1 and the date of this announcement.

V. Application Review Information

A. Review Process and Funding

In addition to any other reviews, a review panel consisting of at least three qualified persons will be formed. Each panelist will objectively review and score the cooperative agreement applications using the evaluation criteria listed below. The panel will recommend centers based on (1) the application scores; (2) the feasibility and adequacy of the project plan and methodology; and (3) how the centers would jointly meet the objectives of the Consortium. The agency will consider the panel's recommendations when

awarding the cooperative agreements. Although the results from the review panel are the primary factor used in making funding decisions, they are not the sole basis for making awards. The agency will consider other factors as well (such as duplication of internal and external research effort) when making funding decisions.

All applicants must use the guidelines provided in the agency's application kit at *www.grants.gov*, for preparing applications requesting funding under this cooperative agreement announcement. These guidelines describe the minimum amount of required project information. However, when completing the Project Narrative, please follow the guidelines under Part IV, Section C, above.

All awardees must adhere to our Privacy and Confidentiality Regulations, as well as provide specific safeguards surrounding client information sharing, paper/computer records/data, and other issues potentially arising from administrative data. 20 CFR part 401. Additional details regarding safeguarding of Personally Identifiable Information are available in the SSA Grants Administration Manual, Section 3–10–60, available at *http://www.ssa.gov/oag/grants/ssagrant_info.htm.*

B. Selection Process and Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Budget and Project Narrative Statement of the application described in Part IV, Section C, above. The application should be prepared in the format indicated by the outline described in the components of a complete application (Part IV, Section D).

Selection of the successful applicants will be based on the technical and financial criteria laid out in this announcement. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below.

The point value following each criterion heading indicates the maximum numerical relative weight that each section will be given in the review process. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care that all criteria are fully addressed in the applications. Applications will be reviewed as follows:

(1) Quality of the background environmental scan/situation analysis. (10 points) Reviewers will judge applications on whether they provide a thoughtful, coherent, and pragmatic discussion of the key research questions influencing financial literacy, particularly within the context of retirement savings.

(2) Quality of the research, development, and evaluation prospectus. (30 points) Reviewers will judge this section on whether the R&D agenda and methodology are both sound and geared toward achieving practical results. Applications must address how they will develop and test compelling calls to action within the context of the key research questions, and they must address how they will approach the evaluation of distributional channels.

The reviewers will judge the application on the breadth and depth of the applicant's commitment to R&D, particularly with regard to the key product research questions and product development and testing described in Part I, Section B, parts 1 and 2. The discussion and research proposed must address at least three product research questions and three-product development and testing examples, with a multi-disciplinary approach. Applicants will generally receive higher scores for addressing more than four product research questions as well as more than three product development and testing examples. However, a strong proposal focusing on three areas will outscore one that is broad and weakly defined. Applicants with additional insightful research proposals will also score higher. Besides detailed plans for research projects in the first year, the research agenda should discuss possible projects over the longer five-year horizon.

(3) Dissemination. (15 points) Reviewers will evaluate the proposed Web site, conferences, and other strategies for dissemination of research and other related information to the general public, including but not limited to a broad and disparate set of practitioner and policy communities.

(4) Quality of the staffing proposal and proposed administration. (25 points) Reviewers will judge the applicant's center Director, staff and proposed business partners/subawardees on relevant research experience, demonstrated research and testing experience, prior administrative and leadership skills, and public administration experience. Relevant research experience may include, but is not limited to: (a) Prior publications on financial literacy tools, financial education in the workplace, retirement planning, saving over the life cycle, affect of benefits and/or health on timing of retirement and claiming decisions (with ideally at least some publications incorporating a social marketing approach); (b) Prior published financial literacy research with audience segments reflecting the above priority areas is sought; (c) Relevant administrative and practical public administration experience that may include, but not be limited to, leading a current center; serving in a senior government capacity in a relevant agency such as the Department of Treasury, the Federal Reserve or the Social Security Administration; or board leadership of relevant non-profit organizations.

(i) An additional criterion will be the center's demonstrated potential to facilitate, on its own or through partnerships/subawards, applied research to inform the development and testing of educational outreach materials and channels. The reviewers will consider both the evidence of past involvement in related R&D, and the specific plans for seeking applied outcomes described in the application as part of that potential. Applications that list key proposed partnership/proposed subawardee personnel, along with the accompanying rationale for selection, (*e.g.,* entities and organizations external to the applicants) are highly desirable.

(ii) Reviewers will consider references from grant/cooperative agreement/contract administrators on previous grants, cooperative agreements and contracts held by the proposed center Director or other key personnel, as well as other known references within the agency. Reviewers will take into account past performance on other grants/cooperative/contracts.

(iii) Director and staff time commitments to the center also will be a factor in evaluation. Reviewers will evaluate the affiliations of proposed key personnel to ensure fulfillment of the required multi-disciplinary nature of the consortium.

(iv) The reviewers will judge applicants on the nature and extent of the organizational support for research and dissemination in areas related to the center's central priorities and this request. Reviewers will evaluate the commitment of the host institution (and the proposed institutional unit that will contain the center) to assess its ability to support both of the center's major activities: (1) R&D and (2) dissemination.

(v) The application should address how the applicant will pull a team together of subawardees—what their evaluation criteria will be, and how they will manage the subawardees if the applicant is the recipient of an award. The government expects that all applicable subawardees will be in any

relevant meetings and conference calls with the government.

(5) Extent to which applicants meet program policy evaluation criteria. It may be desirable to select centers for awards based upon the applicants' total mix of areas of concentration so as to round out portfolio objectives. (10 points)

(6) Appropriateness of the budget for carrying out the planned staffing and activities. (10 points) Reviewers will consider whether (1) the budget ensures an efficient and effective allocation of funds to achieve the objectives of this solicitation, and (2) the applicant has additional funding from other sources, in particular, the host institution. Applications that show funding from other sources that supplement funds from this cooperative agreement will be given higher marks than those without financial support. Awardees are required to contribute a minimum of 5 percent cost share of total project costs.

Panel Recommendations. Once each application is scored and ranked, the panel will then review the top applicants and recommend centers that together best address the range of responsibilities described in Part I.

VI. Award Administration Information

A. Notification

Grants.gov will issue application receipt acknowledgments.

B. Award Notices

Applicants who have been selected will receive an official electronic notice of award signed by an SSA Grants Management Officer around September 15, 2009. Those who were not selected will be notified by official letter.

C. Administration and National Policy Requirements

Grantees will have access to confidential beneficiary information and will be subject to our background checks and fingerprinting in accordance with our personnel, security and suitability requirements. In addition, grantees are required to adhere to our policy regarding the protection of Personally Identifiable Information (PII). When making awards, we will distribute the necessary packages including forms and consents for completion, for both PII and Suitability Determination.

D. Reporting

Every three months during the award period, the grantee will produce a quarterly report of progress. The grantee's quarterly progress reports should provide a concise summary of the progress being made toward completion of activities in the annual work plan. The grantee should pay particular attention in the reports to achieving any milestones set forth in the work plan, delays in achieving milestones, and the affect of delays on the final product. Details regarding the format of quarterly progress reports will be provided in the FLRC Terms and Conditions at the time of award. In addition to the regular reporting, the grantee will provide ad hoc and timely ''hotline'' reports on any significant issues that arise with respect to management and implementation of the work.

In addition, the grantee will submit quarterly and annual financial status reports to us. We will provide detailed instructions for submitting financial reports and the required forms with each year's award.

VII. Agency Contacts

For matters related to the application and submission process for this cooperative agreement, contact Audrey Adams, (410) 965–9469; Mary Biddle, (410) 965–9503; Ann Dwayer, (410) 965–9534; Phyllis Y. Smith, (410) 965–9518. The mailing address is SSA, Office of Acquisition and Grants, Grants Management Team, 7111 Security Blvd., 1st Floor, Rear Entrance, Baltimore, MD 21244. The fax number is (410) 966–9310.

For program content information, send questions to the FLRC mailbox at *flrc@ssa.gov.* Questions and answers will be continuously posted to the Office of Retirement Policy Web site.

VIII. Other

This announcement is for the initial competition of the FLRC.

Along with the official notice of award each year, we will issue a set of Terms and Conditions that define closely the responsibilities of the center and of us towards meeting the goals of the cooperative agreement.

An Annual Priority Research Memo will also be issued each year before the start of the continuation cycle to guide the centers in preparing their continuation applications.

We are committed to accessibility of our products to persons with disabilities. Each center's Web site should meet accessibility standards identified in Section 508 of the Rehabilitation Act. The annual conference also should be accessible to persons with disabilities.

For additional information on how we sponsor grants and other details go to the Grants Home page at *http://www.ssa.gov/oag.*

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–9151 Filed 4–21–09; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS381]

WTO Dispute Settlement Proceeding Regarding United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on March 9, 2009, Mexico requested the establishment of a panel under the *Marrakesh Agreement Establishing the World Trade Organization* (''WTO Agreement'') concerning U.S. limitations on the use of a dolphin-safe label for tuna and tuna products. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS381/4. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute, comments should be submitted on or before May 30, 2009 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2008–0038. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 295–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted only by fax to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Amy Karpel, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3150.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment

of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the establishment of a dispute settlement panel has been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). If such a panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issue Raised by Mexico

In its panel request, Mexico challenges three U.S. measures: (1) The Dolphin Protection Consumer Information Act (19 U.S.C. 1385); (2) certain dolphin-safe labeling regulations (50 CFR 216.91–92); and (3) the Ninth Circuit decision in *Earth Island* v. *Hogarth,* 494 F. 3d. 757 (9th Cir. 2007), and alleges that these measures have the effect of prohibiting Mexican tuna and tuna products from being labeled dolphin-safe. Specifically, Mexico alleges that its tuna and tuna products are accorded less favorable treatment than like products of national origin and like products originating in other countries and are not immediately and unconditionally accorded any advantage, favor, privilege, or immunity granted to like products in other countries. Mexico further alleges that the U.S. measures create unnecessary obstacles to trade, are not based on an existing international standard, and are maintained although their objectives can be addressed in a less trade restrictive manner. Mexico alleges that the U.S. measures appear to be inconsistent with the *General Agreement on Tariffs and Trade 1994,* Articles I:1 and III:4, and the *Agreement on Technical Barriers to Trade,* Articles 2.1, 2.2, 2.3 and 2.4.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2008–0038. If you are unable to provide submission by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2008–0038 on the home page and click ''go''. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notice'' under ''Document Type'' on the left side of the search-results page, and click on the link entitled ''Send a Comment or Submission.'' (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.) The *http://www.regulations.gov* site provides the option of providing comments by filling in a ''General Comments'' field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''General Comments'' field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted only by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice. Any comment containing information submitted in confidence must be submitted only by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the *http://www.regulations.gov* Web site by entering docket number USTR–2008–0038 in the search field on the home page.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. E9–9152 Filed 4–21–09; 8:45 am]

BILLING CODE 3190–W9–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–1033X]

Murray-Calloway Economic Development Corporation—Abandonment Exemption—in Marshall and Calloway Counties, KY

Murray-Calloway Economic Development Corporation (EDC) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon a 7.34-mile line of railroad between milepost 30, near Hardin, Marshall County, KY, and milepost 37.34, near Murray, Calloway County, KY. The line traverses United States Postal Service Zip Codes 42020, 42036, 42048, and 42071.[1]

[1] EDC acquired the line from Hardin Southern Railroad in *Murray-Calloway Economic Development Corporation—Acquisition Exemption–Hardin Southern Railroad, Inc.,* STB Finance Docket No. 34742 (STB served Sept. 7, 2005). EDC has not operated service over the line and its remaining line is currently leased to another operator.

EDC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there has been no overhead traffic on the line since EDC acquired it in 2005, and any previous overhead traffic has been rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 22, 2009, unless stayed pending reconsideration.[2] Petitions to stay that do not involve environmental issues,[3] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 4, 2009. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 12, 2009, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to EDC's representative: Eric M. Hocky, Thorp, Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1910, Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

EDC has filed a combined environmental and historic report addressing the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 27, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), EDC shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by EDC's filing of a notice of consummation by April 22, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–8855 Filed 4–21–09; 8:45 am]

BILLING CODE 4915–01–P

[2] ESC originally indicated that it would consummate the abandonment on or after May 21, 2009. But counsel for EDC has been notified that the earliest this transaction may be consummated is May 22, 2009.

[3] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 204X)]

Union Pacific Railroad Company—Discontinuance of Service Exemption—in Washington County, MO

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonment and Discontinuances of Service* to discontinue service over the Pea Ridge Subdivision, a 20.67-mile line of railroad, extending from milepost 63.75, near New Fountain Farm, to milepost 84.42, near Pea Ridge, in Washington County, MO. The line traverses United States Postal Service Zip Code 93635.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 22, 2009,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[2] must be filed by May 4, 2009.[3] Petitions to reopen must be filed by May 12, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr.,

[1] UP's notice of exemption stated May 21, 2009, as the date of consummation. UP's counsel was notified that May 22, 2009, is the earliest day that the discontinuance may be consummated (50 days after the filed date).

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[3] In discontinuance proceedings, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively. As part of their notice of exemption, UP also requests authority to temporarily remove the track structure and any related highway grade crossing signal systems to provide highway vehicles with unobstructed passage over grade crossings. UP acknowledges that they are obligated to reinstall track and any grade crossing signal systems at its sole expense should operations on the line be reinstated.

101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 10, 2009.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–8765 Filed 4–21–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0055]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-four individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 22, 2009. The exemptions expire on April 22, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov.*

Background

On March 4, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from fifty-six individuals, and requested comments from the public (74 FR 9467). The public comment period closed on April 3, 2009 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-four applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-four applicants have had ITDM over a range of 1 to 28 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 4, 2009, **Federal Register** Notice (74 FR 9467). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual

medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was in favor of the Federal diabetes exemption program.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the twenty-four exemption applications, FMCSA exempts, Lloyd R. Ackley, Jr., Scott D. Baroch, Kelly G. Bauman, Martin J. Bowsher, Michael G. Chisum, Timothy N. Davenport, Ryan S. Ficke, James P. Gilmore, Henry S. Glover, James R. Halliday, Nathan M. Hennix, Jeffrey D. Horsey, Wilbert E. Isadore, Andrew J. Lunsford, Eddie J. Nosser, Paul J. O'Neal, Jr., Larry W. Partridge, Joseph C. Perrin III, Debra A. Pipes, Michael J. Rouark, John T. Savelsberg III, Scott C. Sisk, Ronald A. Stachura, and Chris M. Testa, from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: April 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–9285 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–13411; FMCSA–2005–20027]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on April 2, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 11 renewal applications, FMCSA renews the Federal vision exemptions for Richard D. Carlson, David J. Collier, Robert P. Conrad, Sr., Donald P. Dodson, Jr., Stephanie D. Klang, Mark J. Koscinski, Dexter L. Myhre, Henry C. Patton, George D. Schell, James A. Stoudt, and Ralph A. Thompson.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–9280 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2006–25246; FMCSA–2006–26066]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on March 26, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 23 renewal applications, FMCSA renews the Federal vision exemptions for David W. Ball, Mark L. Braun, Richard A. Brown, Jr., Willie Burnett, Jr., Donald K. Driscoll, Elias Gomez, Jr., Richard G. Gruber, Richard T. Hatchel, William G. Holland, Bruce G. Horner, Leon E. Jackson, Gerald D. Larson, Thomas F. Marczewski, Roy E. Mathews, James T. McGraw, Jr., Carl A. Michel, Sr., Robert A. Moss, Harry M. Oxendine, Bobby G. Pool, Sr., Herbert W. Smith, Ronald Watt, Harry C. Weber, Yu Weng.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: April 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–9283 Filed 4–21–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Survey of Foreign Ownership of U.S. Securities as of June 30, 2009

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2009. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*). This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHL (2009) and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms-sh.html*.

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The following U.S. persons must report on this survey:

(1) U.S. persons who manage the safekeeping of U.S. securities (as specified below) for foreign persons. These U.S. persons, who include the affiliates in the United States of foreign entities, and are henceforth referred to as U.S. custodians, must report on this survey if the total market value of the U.S. securities whose safekeeping they manage on behalf of foreign persons—aggregated over all accounts and for all U.S. branches and affiliates of their firm—is $100 million or more as of June 30, 2009.

(2) U.S. persons who issue securities, if the total market value of their securities owned directly by foreign persons—aggregated over all securities issued by all U.S. subsidiaries and affiliates of the firm, including investment companies, trusts, and other legal entities created by the firm—is $100 million or more as of June 30, 2009. U.S. issuers should report only foreign holdings of their securities which are directly held for foreign residents, i.e., where no U.S.-resident custodian or central securities depository is used. Securities held by U.S. nominees, such as bank or broker custody departments, should be considered to be U.S.-held securities as far as the issuer is concerned.

(3) U.S. persons who receive a letter from the Federal Reserve Bank of New York that requires the recipient of the letter to file Schedule 1, even if the recipient is under the exemption level of $100 million and need only report ''exempt'' on Schedule 1.

What To Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How To Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHLA.help@ny.frb.org*. The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by e-mail: *comments2TIC@do.treas.gov*.

When To Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2009.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 486

hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. E9–9184 Filed 4–21–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE, Form 1040A and Schedules 1, 2, and 3, and Form 1040EZ, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2, and 3; Form 1040EZ; and all attachments to these forms (*see* the Appendix to this notice).

DATES: Written comments should be received on or before May 22, 2009 to be assured of consideration.

ADDRESSES: Direct all written comments to The OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503. *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Chief, RAS:R:FSA, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with the Federal tax laws. The ITBM's approach to measuring burden focuses on the characteristics and activities of individual taxpayers in meeting their tax return filing compliance obligation. Key determinants of taxpayer burden in the model are the way the taxpayer prepares the return, *e.g.*, with software or paid preparer, and the taxpayer's activities, *e.g.*, recordkeeping and tax planning.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system. Time expended and out-of-pocket costs incurred are estimated separately. The methodology distinguishes among preparation methods, taxpayer activities, types of individual taxpayer, filing methods, and income levels. Indicators of tax law and administrative complexity as reflected in tax forms and instructions are incorporated in the model. The preparation methods reflected in the model are:

- Self-prepared without software.
- Self-prepared with software.
- Used a paid preparer.

The types of taxpayer activities reflected in the model are:

- Recordkeeping.
- Form completion.
- Form submission (electronic and paper).
- Tax planning.
- Use of services (IRS and paid professional).
- Gathering tax materials.

The methodology incorporates results from a burden survey of 14,932 taxpayers conducted in 2000 and 2001, and estimates taxpayer burden based on those survey results. Summary level results using this methodology are presented in the table below.

Taxpayer Burden Estimates

Time spent and out-of-pocket costs are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples of out-of-pocket costs include tax return preparation and submission fees, postage, tax preparation software costs, photocopying costs, and phone calls (if not toll-free).

Both time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 26.4 hours, with an average cost of $209 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 33hours, and taxpayers filing Form 1040A and Form 1040EZ are expected to average about 11 hours. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The data shown are the best forward-looking estimates available as of November 4, 2008, for income tax returns filed for 2008. The estimates are subject to change as new data become available. The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Taxpayer Burden Model

The table below shows burden estimates by form type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method (self-prepared without software, self-prepared with software, and prepared by paid preparer).

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545–0074.

Form Numbers: Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE; Form 1040A and Schedules 1, 2 and 3; Form 1040EZ; and all attachments to these forms (*see* the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to some of the forms. The projected number of responses for FY 09 is lower than FY 08. This is because most of the one-time Economic Stimulus filing volume is no longer in the underlying return volume. The return volume in FY 09 reflects the normal demographic growth to the expected filing population. These changes have resulted in an overall decrease of 86,792,628 total hours in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 140,600,000.

Total Estimated Time: 3.703 billion hours (3,703,000,000 hours).

Estimated Time per Respondent: 26.4 hours.

Total Estimated Out-of-Pocket Costs: $29.33 billion ($29,336,000,000).

Estimated Out-of-Pocket Cost per Respondent: $209.00

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB Control Number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Robert Dahl,

Treasury PRA Clearance Officer.

ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

Major form filed or type of taxpayer	Percentage of returns	Time burden Average time burden (hours)						Money burden
		Total time	Record keeping	Tax planning	Form completion	Form submission	All other	Average cost (dollars)
All Taxpayers	100	26.4	15.1	4.6	3.4	0.6	2.8	$209
Major Forms Filed								
1040	71	32.7	19.3	5.7	3.7	0.6	3.4	264
1040A & 1040EZ	29	10.6	4.5	1.8	2.6	0.5	1.4	73
Type of Taxpayer								
Nonbusiness*	72	14.2	5.8	3.3	3.0	0.5	1.7	114
Business*	28	57.1	38.5	8.0	4.2	0.7	5.7	447

*You are a ''business'' filer if you file one or more of the following with Form 1040: Schedule C, C–EZ, E, or F or Form 2106 or 2106–EZ. You are a ''nonbusiness'' filer if you did not file any of those schedules or forms with Form 1040.

APPENDIX

Forms	Title
673	Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	Application To Use LIFO Inventory Method.
972	Consent of Shareholder To Include Specific Amount in Gross Income.
982	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040	U.S. Individual Income Tax Return.
1040 SCH A	Itemized Deductions.
1040 SCH B	Interest and Ordinary Dividends.
1040 SCH C	Profit or Loss From Business.
1040 SCH C–EZ	Net Profit From Business.
1040 SCH D	Capital Gains and Losses.
1040 SCH D–1	Continuation Sheet for Schedule D.
1040 SCH E	Supplemental Income and Loss.
1040 SCH EIC	Earned Income Credit.
1040 SCH F	Profit or Loss From Farming.
1040 SCH H	Household Employment Taxes.
1040 SCH J	Income Averaging for Farmers and Fishermen.
1040 SCH R	Credit for the Elderly or the Disabled.

APPENDIX—Continued

Forms	Title
1040 SCH SE	Self-Employment Tax.
1040 A	U.S. Individual Income Tax Return.
1040 A–SCH 1	Interest and Ordinary Dividends for Form 1040A Filers.
1040 A–SCH 2	Child and Dependent Care Expenses for Form 1040A Filers.
1040 A–SCH 3	Credit for the Elderly or the Disabled+F66 for Form 1040A Filers.
1040 ES (NR)	U.S. Estimated Tax for Nonresident Alien Individuals.
1040 ES/V–OCR	Estimated Tax for Individuals (Optical Character Recognition With Form 1040V).
1040 ES–OCR–V	Payment Voucher.
1040 ES–OTC	Estimated Tax for Individuals.
1040 EZ	Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR	U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ	U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V	Payment Voucher.
1040 X	Amended U.S. Individual Income Tax Return.
1045	Application for Tentative Refund.
1116	Foreign Tax Credit.
1127	Application For Extension of Time For Payment of Tax.
1128	Application To Adopt, Change, or Retain a Tax Year.
1310	Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106	Employee Business Expenses.
2106 EZ	Unreimbursed Employee Business Expenses.
2120	Multiple Support Declaration.
2210	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	Underpayment of Estimated Tax by Farmers and Fishermen.
2350	Application for Extension of Time To File U.S. Income Tax Return.
2350 SP	Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos
2439	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441	Child and Dependent Care Expenses.
2555	Foreign Earned Income.
2555 EZ	Foreign Earned Income Exclusion.
2848	Power of Attorney and Declaration of Representative.
3115	Application for Change in Accounting Method.
3468	Investment Credit.
3520	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	General Business Credit.
3903	Moving Expenses.
4029	Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070	Employee's Report of Tips to Employer.
4070 A	Employee's Daily Record of Tips
4136	Credit for Federal Tax Paid On Fuels.
4137	Social Security and Medicare Tax on Unreported Tip Income.
4255	Recapture of Investment Credit.
4361	Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	Depreciation and Amortization.
4563	Exclusion of Income for Bona Fide Residents of American Samoa.
4684	Casualties and Thefts.
4797	Sales of Business Property.
4835	Farm Rental Income and Expenses.
4852	Substitute for Form W–2, Wage and Tax Statement or Form 1099–R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868	Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP	Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos
4952	Investment Interest Expense Deduction.
4970	Tax on Accumulation Distribution of Trusts.
4972	Tax on Lump-Sum Distributions.
5074	Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329	Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405	First-Time Homebuyer Credit.
5471	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695	Residential Energy Credits.
5713	International Boycott Report.
5713 SCH A	International Boycott Factor (Section 999(c)(1)).

APPENDIX—Continued

Forms	Title
5713 SCH B	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	Tax Effect of the International Boycott Provisions.
5754	Statement by Person(s) Receiving Gambling Winnings.
5884	Work Opportunity Credit.
6198	At-Risk Limitations.
6251	Alternative Minimum Tax—Individuals.
6252	Installment Sale Income.
6478	Credit for Alcohol Used as Fuel.
6765	Credit for Increasing Research Activities.
6781	Gains and Losses From Section 1256 Contracts and Straddles.
8082	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	Disclosure Statement.
8275 R	Regulation Disclosure Statement.
8283	Noncash Charitable Contributions.
8332	Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379	Injured Spouse Claim and Allocation.
8396	Mortgage Interest Credit.
8453	U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	Passive Activity Loss Limitations.
8582 CR	Passive Activity Credit Limitations.
8586	Low-Income Housing Credit.
8594	Asset Acquisition Statement.
8606	Nondeductible IRAs.
8609–A	Annual Statement for Low-Income Housing Credit.
8611	Recapture of Low-Income Housing Credit.
8615	Tax for Certain Children Who Have Investment Income of More Than $1,800.
8621	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621–A	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689	Allocation of Individual Income Tax To the Virgin Islands.
8693	Low-Income Housing Credit Disposition Bond.
8697	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812	Additional Child Tax Credit.
8814	Parents' Election To Report Child's Interest and Dividends.
8815	Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818	Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	Orphan Drug Credit.
8821	Tax Information Authorization.
8822	Change of Address.
8824	Like-Kind Exchanges.
8826	Disabled Access Credit.
8828	Recapture of Federal Mortgage Subsidy.
8829	Expenses for Business Use of Your Home.
8832	Entity Classification Election.
8833	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	Qualified Electric Vehicle Credit.
8835	Renewable Electricity and Refined Coal Production Credit.
8838	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839	Qualified Adoption Expenses.
8840	Closer Connection Exception Statement for Aliens.
8843	Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	Empowerment Zone and Renewal Community Employment Credit.
8845	Indian Employment Credit.
8846	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	Credit for Contributions to Selected Community Development Corporations.
8853	Archer MSAs and Long-Term Care Insurance Contracts.
8854	Initial and Annual Expatriation Information Statement.
8858	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859	District of Columbia First-Time Homebuyer Credit.
8860	Qualified Zone Academy Bond Credit.
8861	Welfare-to-Work Credit.
8862	Information to Claim Earned Income Credit After Disallowance.
8863	Education Credits.
8864	Biodiesel Fuels Credit.
8865	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K–1	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	Transfer of Property to a Foreign Partnership.
8865 SCH P	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	Extraterritorial Income Exclusion.

APPENDIX—Continued

Forms	Title
8874	New Markets Credit.
8878	IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP	Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).
8879	IRS e-file Signature Authorization.
8879 SP	Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880	Credit for Qualified Retirement Savings Contributions.
8881	Credit for Small Employer Pension Plan Startup Costs.
8882	Credit for Employer-Provided Childcare Facilities and Services.
8885	Health Coverage Tax Credit.
8886	Reportable Transaction Disclosure Statement.
8888	Direct Deposit of Refund to More Than One Account.
8889	Health Savings Accounts (HSAs).
8891	U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	Low Sulfur Diesel Fuel Production Credit.
8898	Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	Qualified Railroad Track Maintenance Credit.
8901	Information on Qualifying Children Who Are Not Dependents (For Child Tax Credit Only).
8903	Domestic Production Activities Deduction.
8906	Distills Spirits Credit.
8907	Nonconventional Source Fuel Credit.
8908	Energy Efficient Home Credit.
8910	Alternative Motor Vehicle Credit.
8911	Alternative Fuel Vehicle Refueling Property Credit.
8915	Qualified Hurricane Retirement Plan Distribution and Repayments.
8917	Tuition and Fees Deduction.
8919	Uncollected Social Security and Medicare Tax on Wages.
8925	Report of Employer-Owned Life Insurance Contracts.
8931	Agricultural Chemicals Security Credit.
8932	Credit for Employer Differential Wage Payments.
9465	Installment Agreement Request.
9465 SP	Solicitud para un Plan de Pagos a Plazos.
Notice 2006–52.	
Notice 160920–05	Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables	Child Tax Credit.
REG–149856–03	Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS–4	Application for Employer Identification Number.
SS–8	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	Forest Activities Schedules.
W–4	Employee's Withholding Allowance Certificate.
W–4 P	Withholding Certificate for Pension or Annuity Payments.
W–4 S	Request for Federal Income Tax Withholding From Sick Pay.
W–4 SP	Certificado de Exencion de la Retencion del Empleado.
W–4 V	Voluntary Withholding Request.
W–5	Earned Income Credit Advance Payment Certificate.
W–5 SP	Certificado del pago por adelantado del Credito por Ingreso del Trabajo.
W–7	Application for IRS Individual Taxpayer Identification Number.
W–7 A	Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W–7 SP	Solicitud de Numero de Identicacion Personal del Contribuyente del Servicio de Impuestos Internos.
Forms Removed From This ICR	*Reason for Removal*
1) Forms 1040 ES–E	Obsolete.
2) Form 1040–V–OCR–ES	Obsolete.
3) Form 1040–ES–OCR	Obsolete.
4) Form 5471 (Sch N)	Obsolete.
5) Form 8453–OL	Obsolete.
6) Form 8453–OL(SP)	Obsolete.
7) Form 8830	Obsolete.
8) Forms 8836 & Sch's	Obsolete.
9) Form 8836–SP & Sch's	Obsolete.
10) Form 8913	Obsolete.
11) Form 8914	Obsolete.
Forms Added to This ICR	*Justification for Addition*
1) Form 1127	Application For Extension of Time For Payment of Tax.
2) Form 5405	First-Time Homebuyer Credit.
3) Form 8925	Report of Employer-Owned Life Insurance Contracts.
4) Form 8931	Agricultural Chemicals Security Credit.

APPENDIX—Continued

Forms	Title
5) Form 8932	Credit for Employer Differential Wage Payments.

[FR Doc. E9–9244 Filed 4–21–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Continental Heritage Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 13 to the Treasury Department Circular 570, 2008 Revision, published July 1, 2008, at 73 FR 37644.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The Continental Heritage Insurance Company, Columbus, Ohio (NAIC 39551), has redomesticated from the state of Ohio to the state of Florida, effective December 22, 2008.

Federal bond-approving officers should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2008 revision, to reflect this change.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: April 9, 2009.

Vivian L. Cooper,

Director, Financial Accounting and Services Division.

[FR Doc. E9–9105 Filed 4–21–09; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Wednesday,
April 22, 2009

Part II

The President

Proclamation 8362—National Park Week, 2009

Federal Register
Vol. 74, No. 76
Wednesday, April 22, 2009

Presidential Documents

Title 3—

The President

Proclamation 8362 of April 17, 2009

National Park Week, 2009

By the President of the United States of America

A Proclamation

America's National Parks are among our Nation's most precious treasures. During National Park Week, we celebrate these spaces and commit to protecting them for future generations of Americans.

National Parks bring together Americans of all backgrounds and help us understand the story of America. From the Lincoln Memorial and Ellis Island to the Great Smoky Mountains and Yellowstone, National Parks attract visitors from across the country and from all walks of life. The grandeur and simplicity of these areas inspire visitors no matter their personal stories. National Parks also help Americans learn more about our shared history. From the Prehistoric Trackways National Monument to the Civil War battlefield at Gettysburg, National Parks allow Americans to explore our Nation's past and to understand events that occurred over the long course of our history.

Our system of National Parks is entrusted to each generation of Americans. We have an obligation to our children to keep these spaces pristine. As citizen stewards, Americans can participate in efforts in their communities to preserve National Parks, and support policies that achieve this end. My Administration continues to advocate for initiatives that protect and expand National Parks. The American Recovery and Reinvestment Act promotes conservation and creates new job opportunities in National Parks, and the Omnibus Public Land Management Act designates thousands of miles of trails for the National Trails System, protects more than 1,000 miles of rivers, and secures millions of acres of wilderness.

This week we also honor the committed professionals and volunteers working every day to support the National Parks. Laboring among towering mountains and broad plains, in city centers, and along our rivers and seashores, these Americans deserve thanks for their contributions to current and future generations.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 18 through April 26, 2009, as National Park Week. I invite all my fellow citizens to join me in commemorating the 2009 theme for National Park Week, ''National and Community Service,'' and to visit these wonderful spaces, discover all they have to offer, and become active participants in Park conservation.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–9407
Filed 4–21–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

Vol. 74, No. 76

Wednesday, April 22, 2009

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H.R. 146/P.L. 111–11
Omnibus Public Land Management Act of 2009 (Mar. 30, 2009; 123 Stat. 991)

H.R. 1512/P.L. 111–12
Federal Aviation Administration Extension Act of 2009 (Mar. 30, 2009; 123 Stat. 1457)

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